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SENATE RULES COMMITTEE  
STATE OF CALIFORNIA

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1 HEARING

2 SENATE RULES COMMITTEE

3 STATE OF CALIFORNIA

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, AUGUST 13, 1986

16 1:45 P.M.

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25 Reported by:

26 Evelyn Mizak  
27 Shorthand Reporter  
28



APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

SENATOR KEN MADDY

ROY BROPHY, Member  
Regents of the University of California

MARILYN MURATA-DEMETRE, Commissioner  
Workers' Compensation Appeals Board

CHARLES S. POOCHIGIAN, Member  
Fair Employment and Housing Commission

CRUZ F. SANDOVAL, Chairperson  
Fair Employment and Housing Commission

VIRNA M. CANSON, Regional Director  
West Coast Region, NAACP

PATIENCE MILROD, Esq.  
Attorney at Law, Fresno

DELMAR WILLIAMS, President  
El Cerrito Branch, NAACP





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P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Roy Brophy, Member of the Board of Regents of the University of California.

MR. BROPHY: Thank you, Senator.

CHAIRMAN ROBERTI: Mr. Brophy, we'll ask you what we ask all the Governor's Appointees: What do you feel your qualifications are for this very important post?

MR. BROPHY: Well, I started out serving in the San Juan Board of Education here in Sacramento, where I ended up President. I went on to the Board of Governors of the Community Colleges. From there I went to the California State University system where I was chairman three times out of the last eleven years. I've served on CPEC; I've served on the National Education on Post Secondary Education; I've served on the Board of Visitors of the Maritime Academy, California Maritime Academy. I guess that sets some kind of a new record of service there.

CHAIRMAN ROBERTI: Is there anyone in the audience in opposition to Mr. Brophy's appointment?

SENATOR CRAVEN: Move Mr. Brophy's confirmation.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Brophy's appointment do pass.

In reviewing your resume, needless to say, it does indicate you're enormously well qualified to serve in this position.



1 I would like to raise one point. At some point we're  
2 going to have to address this, and I would say it's in the very  
3 near future. That is, and it certainly doesn't deal with  
4 Mr. Brophy's qualifications, but the Board of Regents still is  
5 not reflective of the total picture of California in terms of  
6 ethnic background, in terms of sex, in terms of economic  
7 background, maybe even occupationally. It does reflect a rather  
8 narrow parameter of the State.

9 Now, that is not to say that your qualifications are not  
10 self-evident, and on your appointment I don't choose to make this  
11 stand. But we have in the past indicated this to Governor  
12 Deukmejian. The lack of a broad-based Board isn't totally of his  
13 doing. It's been going on in this State for quite some time, but  
14 once again, we're serving notice that this can't continue.

15 Nevertheless, Mr. Brophy's name is before us, and I will  
16 entertain a motion.

17 SENATOR CRAVEN: I have moved.

18 CHAIRMAN ROBERTI: Senator Craven has moved.

19 MR. BROPHY: Thank you.

20 SENATOR CRAVEN: The Secretary will call the roll.

21 SECRETARY WEBB: Senator Doolittle. Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Senator Roberti.





1 CHAIRMAN ROBERTI: Aye.

2 There are four votes, so we're going to keep the roll  
3 open because Senator Doolittle's indicated he wants to be  
4 registered in your favor.

5 Congratulations. We hope to work with you.

6 MR. BROPHY: Thank you very much.

7 CHAIRMAN ROBERTI: Senator Craven moves a call. Without  
8 objection such will be the order.

9 (Thereupon legislative matters were  
10 discussed and considered.)

11 CHAIRMAN ROBERTI: Back to Governor's Appointments,  
12 Marilyn Murata-Demetre, Commissioner of the Workers' Compensation  
13 Appeals Board.

14 Please tell us, we've asked what you feel your  
15 qualifications are for this importation position.

16 MS. MURATA-DEMETRE: For the past eight years, I have  
17 worked as a Safety Health Manager for the City of Inglewood. And  
18 basically what I did is, I administered the Safety Health Program  
19 and administered the Workers' Compensation Program for the City.

20 And prior to that I was a Safety Officer for the Los  
21 Angeles County Department of Parks and Recreation.

22 And I've had years of service in the area of Workers'  
23 Compensation. The program that we had at the City was very  
24 successful. We were able to provide benefits immediately without  
25 delays and keep the costs of compensation stable for a period of  
26 eight years.

27 CHAIRMAN ROBERTI: Very good.  
28



1 Is there any further discussion or debate? Is there any  
2 opposition? Questions?

3 Senator Petris.

4 SENATOR PETRIS: I think I had a question on the  
5 backlog. It was pretty for a while.

6 What is it now, the backlog of cases?

7 MS. MURATA-DEMETRE: Oh, we're pretty much up to date  
8 now.

9 SENATOR PETRIS: Up to date now?

10 MS. MURATA-DEMETRE: Yes, we have a full Board.

11 When I was first appointed, it was pretty much  
12 backlogged, put a lot of hours in, but we have a full Board now  
13 so it's up.

14 SENATOR PETRIS: What about the judges? You're short of  
15 judges now within the system, aren't you?

16 MS. MURATA-DEMETRE: I'm really not sure, because that's  
17 not within my jurisdiction.

18 SENATOR PETRIS: Doesn't that affect the number of cases  
19 you get, how soon you get them?

20 MS. MURATA-DEMETRE: It may have some delays, maybe  
21 some.

22 SENATOR PETRIS: Thank you.

23 CHAIRMAN ROBERTI: Any further questions?

24 SENATOR MELLO: Move confirmation to the Floor.

25 CHAIRMAN ROBERTI: Senator Mello moves confirmation do  
26 pass and to the Floor.

27 Secretary will call the roll.  
28





1 SECRETARY WEBB: Senator Doolittle. Senator Mello.

2 SENATOR MELLO: Aye.

3 SECRETARY WEBB: Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Senator Craven. Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 The vote is three to nothing; confirmation is  
8 recommended to the Floor.

9 MS. MURATA-DEMETRE: Thank you.

10 CHAIRMAN ROBERTI: Thank you.

11 (Thereupon legislative matters were  
12 discussed and considered.)

13 CHAIRMAN ROBERTI: Senator Doolittle moves to lift the  
14 call on the confirmation of Mr. Brophy.

15 Secretary will call the absentees.

16 SECRETARY WEBB: Senator Doolittle.

17 SENATOR DOOLITTLE: Aye.

18 CHAIRMAN ROBERTI: The vote is five to nothing; Mr.  
19 Brophy's confirmation is recommended to the Floor do pass.

20 (Thereupon legislative matters were  
21 discussed and considered.)

22 CHAIRMAN ROBERTI: Next appointment is Mr. Charles S.  
23 Poochigian, Member of the Fair Employment and Housing Commission.

24 Mr. Poochigian, we'll ask you what we ask all the  
25 Governor's Appointees: Why you feel you're qualified to assume  
26 this position?

27 MR. POOCHIGIAN: Thank you, Mr. Chairman and Senators.  
28



1 I have for a long, long time, actually since childhood,  
2 had an interest in serving in some capacity in government, and  
3 having chosen a career in law, where I practice in my home where  
4 I was born in Fresno, I have not been afforded the opportunity to  
5 do that at the State or federal level. When this opportunity  
6 came about, I frankly jumped at the chance to serve the people of  
7 California and to advance my own ambitions to do something in a  
8 positive way in government.

9 And the fact is that I have been serving on the  
10 Commission now for nearly a year. I believe November of 1985 was  
11 my first meeting.

12 I believe very strongly that I have been a positive  
13 force and I have been a prime contributor to the advancement of  
14 the cause or the causes of the Act, the Fair Employment and  
15 Housing Act. I believe that I am well suited for the position,  
16 partially I would say -- and I hesitate to because I'm not always  
17 the greatest defender of the law profession -- but I would say  
18 partially because of my legal experience. And I know that  
19 several members of this Committee are also attorneys.

20 We are a quasi-judicial body. We hear cases. We are  
21 like a district court in the federal system, like in some sense  
22 the Supreme Court in California. We hear cases brought by the  
23 Fair Employment and Housing Department, heard by administrative  
24 law judges in a very extensive system throughout California, ably  
25 presented generally, and ultimately brought before us for final  
26 review and for decision making.



1 I believe that you probably all have already heard, and  
2 I'm sure you will hear some more this afternoon, to the effect  
3 that I have not had a civil rights background, that I'm not a  
4 civil rights or social activist, and that is true.

5 I have not had that experience or exposure, yet I bring  
6 to the position, I believe, some unique and special qualities  
7 which I believe make me well suited to serve the people of  
8 California. Among those is the fact that as the grandson of  
9 immigrant Armenians, who holds very dear my love and respect for  
10 my ancestors, for my family members who have suffered  
11 historically outside this country, and being well aware and  
12 appreciative of the fact that many of them suffered some even in  
13 this country, and as some do even to this day, but to a great  
14 degree up until the '40s and '50s in my own community in Fresno,  
15 particularly in the housing area, I am aware of the kinds of  
16 problems that people face in the immigrant class and in the  
17 minority class.

18 And I come to this position with the sense of commitment  
19 to work toward ridding society of all forms of discrimination,  
20 the kinds that were faced by my family members outside this  
21 country and in Fresno County, California, as well as the kind of  
22 discrimination faced by people of other ethnic minorities and  
23 women and people who are the victims of any other form of  
24 arbitrary discrimination.

25 I am unique, too, on this Commission, I think, in that I  
26 come from the Central San Joaquin Valley. My roots are in  
27 farming. I have a small town mentality, if you will, and I say  
28





1 that in a positive way. I'm proud of that. And I bring, I  
2 think, a special point of view to the deliberations that the  
3 Commission engages in regularly.

4 The fact of the matter is that I, in my professional  
5 practice, deal largely with small business people, that is, small  
6 employers, some people in the housing field, and you will hear  
7 that I represent a number of people in the housing field, and  
8 that's true. That I represent also employees; I represent also  
9 some tenants.

10 And I believe that as a sole practitioner in a small  
11 city, really, and a small practice, that I have the opportunity  
12 and regularly do get to see people in all walks of life with all  
13 kinds of problems.

14 The Fair Employment and Housing Commission is the  
15 people's court, really a people's court. It's as you each know,  
16 and I'm not going to sit here and tell you what the Fair  
17 Employment and Housing Commission is; many of you were movers and  
18 shakers in the movement to get it established, I realize that,  
19 and you should be proud and I'm proud of it, too.

20 I can tell you only that while I do, and people will  
21 tell you that I do have an interest in ensuring that the small  
22 business community, for example, in the State of California gets  
23 a fair shake, I am also most interested in making sure that the  
24 people of California get their fair shake. I'm committed to  
25 being fair with everybody. I'm committed to being sensitive to  
26 the problems brought before us. I think I have been  
27 consistently.  
28





1 I am motivated by no particular agenda. I'm motivated  
2 only in doing a good job, doing a credible job for the Commission  
3 and for the State and working toward making the Commission the  
4 best civil rights organization in the United States, as I believe  
5 it is today and should continue to be.

6 I'm not a soft sell. You'll hear people say that I'm  
7 not. I'm proud that I'm not. As a lawyer and a contributing  
8 force on this Commission, I believe that it's our duty to work  
9 our cases up; it's our duty to think hard; it's our duty to  
10 challenge everyone before us, whether it be fellow Commissioners,  
11 whether it be the very able, capable, bright, brilliant staff we  
12 have, whether it be the litigant, the Department.

13 I believe we have to work hard to make sure that the end  
14 product is a quality product where everyone's interest has been  
15 aired and every possible avenue has been explore so that we can  
16 render decisions as our courts of appeal and our Supreme Court  
17 do, which hopefully will be held in the highest esteem by every  
18 other like court throughout the country.

19 That's about all I have to say. I trust that I will  
20 have an opportunity to respond to some of those of my detractors  
21 that are present.

22 Thank you.

23 CHAIRMAN ROBERTI: Thank you very much, Mr. Poochigian.

24 Before we go to opposition, is there further support in  
25 the audience? Yes, please come forward.

26 Mr. Cruz F. Sandoval.  
27  
28



1 MR. SANDOVAL: Yes, Senator Roberti, Members of the  
2 Rules Committee.

3 I am Cruz Sandoval. I am Chairman of the Fair  
4 Employment and Housing Commission.

5 I urge you to confirm Charles Poochigian to the Fair  
6 Employment and Housing Commission.

7 Since he has been appointed to the Commission last  
8 November, Chuck has consistently demonstrated his willingness to  
9 serve and to perform the duties that are required of its members.

10 He comes to our monthly meetings very well prepared,  
11 having carefully read the lengthy materials which are sent prior  
12 to each meeting. It's evident that much thought has gone into  
13 his discussion of the important issues which confront the  
14 Commission. He is objective and reasonable. Chuck's attendance  
15 at Commission meetings has been excellent and shows his concern  
16 for our civil rights work.

17 I therefore urge you to confirm the appointment of this  
18 hard-working member of the Commission, and I thank you very much.

19 CHAIRMAN ROBERTI: Thank you very much, Mr. Sandoval.

20 Is there opposition in the audience?

21 MS. CANSON: Mr. Chairman and Members of the Senate  
22 Rules Committee, before I begin, I don't know that there's enough  
23 seats, but we do have in the audience attorney Patience Milrod,  
24 practicing attorney in Fresno, California. We have the President  
25 of the El Cerrito Branch, NAACP, Mr. Del Williams; a member of  
26 the Executive Committee, Ms. Rose Holloway; Mr. Eugene Covington  
27 who is past president of the Sacramento Branch, NAACP and a  
28 volunteer in the legislative office.



1 I would ask the Committee's permission for those  
2 persons, if they so choose, to speak.

3 CHAIRMAN ROBERTI: They will have the opportunity, yes.

4 MS. CANSON: Thank you.

5 I'm Virna Canson. I reside at 4216 Lotus Avenue in  
6 Sacramento. I am the Regional Director of the West Coast Region,  
7 NAACP, and that's headquartered at 2480 Sutter Street, Suite 2,  
8 in San Francisco. The Western Region, also known as Region 1, is  
9 one of seven regions which comprise the National Association for  
10 the Advancement of Colored People. My jurisdiction is nine  
11 states.

12 I'm here to speak in opposition to the proposed  
13 confirmation of Attorney Poochigian as a member of the California  
14 Fair Employment and Housing Commission.

15 The Nominee was named in November by the Governor to  
16 succeed a veteran civil rights person, C. L. Dellums, who has  
17 served as a Commissioner since the passage of the legislation.  
18 We registered opposition with the Governor's Office shortly after  
19 the appointment.

20 In order for the Rules Committee to fully understand the  
21 depth of our opposition, and let me say I am aware that a letter  
22 has come to you on the stationery of the Fresno NAACP from a Mr.  
23 Arthur Jenkins, who represents himself as the President. He is  
24 the President. I have spoken with the other persons from Fresno,  
25 and their position is quite different, and I was in fact in  
26 Fresno on August 5th, attended a duly called meeting of the  
27 NAACP, and no such discussion took place.  
28





1 Accompanying me at that meeting was the National  
2 Director of Branch and Field Services who was made aware of the  
3 personal position of Mr. Jenkins, and I wanted to clarify that,  
4 lest there's some confusion, all NAACPs have their individual  
5 rights; however, in holding positions in the NAACP, we are  
6 consistent in terms of how we work through these particular kinds  
7 of things. We are sensitive to the various political pressures  
8 that are frequently exerted and are suspicious that this perhaps  
9 has some relationship to the fact that Mr. Jenkins runs a program  
10 funded by the county with the authority of the Board of  
11 Supervisors holding his fate in its hands, said Board of  
12 Supervisors being chaired by the father-in-law of Mr. Poochigian.

13 I've indicated how deep our opposition is. And I'm  
14 asking if the Committee will consider this opposition in a total  
15 context.

16 That context includes the long struggle for the passage  
17 of the FEPC. It includes the legislative intent and the present  
18 overt and covert attacks on civil rights and on our gains.

19 Our fear for the future of the FEPC Commission and the  
20 Department, our apprehensions about the priorities of the  
21 Consumer Services Agency's Secretary, Ms. Chilton, as they relate  
22 to the FEPC, and the FEPC is located in that Agency, our  
23 humiliation at the shabby treatment of the former Commissioner  
24 Dellums by the Governor's Office, are all a part of the overall  
25 context in which we view this appointment and ask you to consider  
26 it.  
27  
28





1           What positive and supportive qualities does this  
2 Appointee bring to the FEPC Commission? A look at the resume of  
3 the Nominee reveals nothing to cause us to believe this to be an  
4 acceptable Commissioner. He had not been born when we began our  
5 long struggle to get the law passed. Minorities, labor,  
6 religious groups, and some individuals formed a coalition to push  
7 for the passage of the legislation. This group began its work 12  
8 years or more before the bill was passed. It chose as its leader  
9 Chairman C. L. Dellums.

10           C. L. Dellums, now in his 80s, had invested more than 30  
11 years in the civil rights struggle and the labor struggle prior  
12 to his becoming the leader in the fight for the passage of the  
13 FEPC.

14           SENATOR CRAVEN: Mr. Chairman.

15           CHAIRMAN ROBERTI: Senator Craven.

16           SENATOR CRAVEN: If I may interrupt the witness a  
17 moment.

18           MS. CANSON: Yes.

19           SENATOR CRAVEN: I am interested in what you say, and  
20 you make a very articulate presentation.

21           However, some of the past history, or what perhaps  
22 happened or did not happen as the case may be to Mr. Dellums I  
23 understand, and I may be in accord with that which you have said  
24 or propose to say.

25           However, I am really more interested in hearing what you  
26 may have against the Nominee or comments about him -- not  
27 necessarily against but as you see fit to say -- rather than some  
28



1 of the past history of the civil rights movement, or Mr. Dellums,  
2 who is a very fine gentleman, which we all know to be the truth.

3 So, could you do that, dear?

4 MS. CANSON: Senator, I certainly appreciate what you  
5 are saying. I suppose and I don't know whether you were aware of  
6 the Nominee's public representation that he knew nothing or had  
7 not heard of the Commission prior to his being called by the  
8 Governor. And so a part of my testimony is to make the case that  
9 the Candidate up until the time of his nomination was not aware  
10 that such an agency even existed.

11 Perhaps I'm close to this emotionally and otherwise  
12 because I was a part, as young as I may look, I was a part of all  
13 of those years. All of those years I was a part of that.

14 I do appreciate it, and I will move along. I think it's  
15 important for some comparison of the manner in which  
16 then-Governor Reagan approached Mr. Dellums and reappointed him  
17 as compared to what transpired.

18 When a man like C. L. Dellums is shown disrespect, it  
19 reflects upon all of us who struggle: my organization; Japanese-  
20 American Citizens' League; organized labor; Jewish groups, and I  
21 don't know whether you've got that many years here, Mr. Craven,  
22 but we used to come up here before the new annex was built and --

23 SENATOR CRAVEN: I haven't been here that long.

24 MS. CANSON: All right.

25 So, I do think it's important, particularly in light of  
26 the manner in which the Nominee has used these many months in the  
27 performance, as we have it told to us, and as we have had  
28



1 frustrated and disappointed staff to call our offices to alert us  
2 to the possibility that they will be leaving for the reason that  
3 the oppression and the misuse of authority is so prevalent.

4 The Nominee, I've indicated, is a lawyer; you know that.  
5 And he did acknowledge, or he has not denied that he made the  
6 statement that he had not heard of this Commission.

7 We've looked diligently for some shreds of evidence that  
8 he brings something to this Commission. People have served and  
9 have been sufferers of oppression, and then those who have been  
10 sufferers of oppression, a number of them reach out into the  
11 community and make some kind of record, other than membership in  
12 the Elks Club, to express how they want to help make things  
13 different.

14 Quite contrary to his building, we are advised that he  
15 consistently applies his skills to the strategies which delay the  
16 work of the Commission, demoralize the staff, and in fact place  
17 complainant's fate in jeopardy.

18 Today's national climate of anti-civil rights, the  
19 disastrous appointments as Chairpersons as Clarence Pendleton of  
20 the U.S. Civil Rights Commission and Clarence Thomas of the Equal  
21 Opportunities Commission, the rise of hate groups, cause us to  
22 take steps to assure that key agencies at the federal, state and  
23 local levels do not become extensions of this national anti-civil  
24 rights offensive.

25 The question before the Rules Committee is not whether  
26 the attorney is a nice man. I do not question that. Or whether  
27 he is a well-trained lawyer, or whether the Governor has the  
28 right to choose persons to serve in his administration.





1 We believe that the key question of this Nominee is has  
2 he the will, the experience, the interpersonal skills to function  
3 effectively in this agency, which has been established by law to  
4 protect the human and civil rights of the citizens.

5 There are those who advocate volunteer approaches in  
6 this area, even after 27 years of the existence of the statute.  
7 They seek to relegate the needs of the aggrieved and protected  
8 classes to volunteer compliance. There are lawyers who apply  
9 their skills to subvert the intent of affirmative action.

10 Some find various ways to distract the mission of the  
11 agencies established to provide protection. Just a few years --  
12 a few days ago, the U.S. Supreme Court Justice Leon Brennan  
13 called on the American Bar Association to help continue the new  
14 commitment to the 14th Amendment, which was begun dramatically in  
15 1954, to enforcement of fundamental and equal rights. This is  
16 quotes:

17 "Without aggressive and diligent  
18 action equal rights, for all the  
19 commitment, can be reduced to  
20 feeble promise or maybe sometimes  
21 and only in some respects."

22 Over the number of months that the Nominee has been  
23 sitting on the Commission, there's been ample time for him to  
24 exhibit his willingness and his ability to offset his admitted  
25 ignorance of the existence of the FEPC and his serious lack of  
26 experience.  
27  
28





1 He has pursued another course. As we have reviewed the  
2 legislative intent, as we have looked at various kinds of  
3 evidence, we see no mandate in that that requires the kind of  
4 allegiance to small business and others that the Nominee has  
5 articulated before you today.

6 We think that possibility of the legislation being  
7 aborted, the intent being aborted, as the doors are closed and  
8 the conciliation is being negotiated, the risks that we take are  
9 very great.

10 The NAACP functions primarily out of volunteer help, and  
11 we cannot be there. We are not allowed to be in Executive  
12 Sessions.

13 And so, if in fact there is the erosion of the  
14 legislative intent, if the law is being rewritten  
15 administratively outside the public view, then we are at risk.  
16 We can ill afford to have this happen.

17 We believe that the Nominee has exhibited that he is  
18 incapable of carrying out the legislative intent of the Fair  
19 Employment and Housing statutes, and we urge that you deny  
20 confirmation.

21 Thank you.

22 CHAIRMAN ROBERTI: Thank you, Mrs. Canson.

23 SENATOR CRAVEN: Mr. Chairman, Senator Maddy is here,  
24 Mr. Chairman, and was detained on other business and would like  
25 to make a comment relative to the Nominee.

26 May he be worked into the agenda at this time for a  
27 brief comment?  
28



1 CHAIRMAN ROBERTI: Yes, Senator Maddy.

2 SENATOR MADDY: Mr. Chairman and Members, I only want to  
3 make a very brief comment.

4 I've known this Nominee for some period of time, and to  
5 be very candid with this group, I have been involved in a great  
6 number of the appointments that the Governor has made to various  
7 boards and commissions.

8 I was not necessarily directly involved with this  
9 appointment, except to recommend to the Governor that this was an  
10 outstanding young man who I'd worked with in the community, not  
11 necessarily as a lawyer because I had left before he began to  
12 practice law.

13 But to me -- I'm searching for the right word -- I'm  
14 sorry that whatever political problems that this appointment has  
15 created must fall on the shoulders of this young man, because I  
16 think he's an outstanding young man with great integrity, would  
17 do a tremendous public service by offering his services to the  
18 public in any capacity.

19 As I say, I regret that whatever politics may be  
20 involved in this appointment, this opposition, other groups in  
21 the State of California, should fall on the shoulders of this  
22 young man, that he should have to take any kind of personal abuse  
23 as a result of that.

24 I would trust that we look to his qualifications, his  
25 abilities, his integrity, and I think they're all outstanding and  
26 that he should be confirmed.

27 CHAIRMAN ROBERTI: Thank you very much, Senator.  
28



1 We're back to opposition. Senator Maddy was in support.

2 Please come forward and indicate who you represent.

3 MS. MILROD: Thank you. My name is Patience Milrod.

4 I'm an attorney, and I practice in Fresno. I've been in Fresno  
5 for about six years, and I've practiced three years in Legal  
6 Services, and I think it was there that I first encountered  
7 Mr. Poochigian. And since then in private practice I also have  
8 sat across the table, or on opposite sides of the counsel table  
9 on a number of occasions.

10 I like Mr. Poochigian very much. We get along well.  
11 I've always found him to be a scholar and a gentleman whenever  
12 we've had any contact, but I am here to oppose his nomination.

13 MR. POOCHIGIAN: We are collegial in Fresno in the legal  
14 community.

15 (Laughter.)

16 MS. MILROD: The first matter that I hope to address is  
17 Senator Craven's question with specifics.

18 The first matter that causes me concern is, I perceive a  
19 conflict of interest in Mr. Poochigian's position as a  
20 Commissioner on the Fair Employment and Housing Commission.

21 He's already indicated to you that he represents  
22 landlords, and I know that as I've indicated from my own  
23 experience.

24 It's also my understanding that he is a landlord, that  
25 he has a share in a least as a limited partner -- I'm not clear  
26 because I haven't seen the partnership agreement -- but he has  
27 some share in a variety of real estate limited partnerships, at  
28





1 least some of which are involved in residential property, or own  
2 residential property. I think that that is one concern.

3 Another concern is that he represents landlords. I've  
4 been preparing to come up here today. I spoke with a number of  
5 people, principally another attorney who --

6 CHAIRMAN ROBERTI: If I could just stop you right there.

7 MS. MILROD: Sure.

8 CHAIRMAN ROBERTI: I generally myself have a tenant  
9 orientation, but I don't really quite understand how representing  
10 landlords necessarily puts a person in a prejudicial position on  
11 a board such as this.

12 I would suspect that if we checked the resumes of all  
13 the people who have sat on the board, you'd find an awful lot of  
14 people who've been landlords.

15 MS. MILROD: Are you asking me about whether being a  
16 landlord or representing landlords, or both?

17 CHAIRMAN ROBERTI: Maybe both, if they're different then  
18 you can address both.

19 MS. MILROD: Let me address the fact that he is a  
20 landlord. I see that as less significant, and especially given  
21 that, you know, he's not the property manager himself,  
22 apparently, except of one or he's involved directly in management  
23 only with respect to commercial properties. So I see that as  
24 less significant, although I do think it plays a role; it is a  
25 factor.

26 With respect to the fact that he represents landlords, I  
27 believe the volume of his practice in representation of landlords  
28





1 means that there must be an identify, or he must identify  
2 substantially with a certain segment of the community and it is  
3 not tenants.

4 And the function of the Commission is to enforce  
5 aggressively the laws that protect tenants. And I think that Mr.  
6 Poochigian will have to find himself and has found himself over  
7 this last year in the position of deciding, first of all, whether  
8 or not individuals who are analogous to, or identified with  
9 people he represents every day, he must decide as a Commissioner  
10 over and over again whether or not there is a liability on the  
11 part of the landlord, and whether or not, if there is liability,  
12 damages will be awarded.

13 And I see this as -- you can be a very aggressive,  
14 strong, competent, landlord representative, which is what Mr.  
15 Poochigian is, and you can be a very strong, aggressive,  
16 competent Commissioner, but I do not see that you can be both.

17 SENATOR CRAVEN: Do you ever think, Ms. Milrod, that  
18 judges sitting on the bench may have had a practice which had  
19 been with criminals, a solely criminal practice, and that that  
20 would affect their judgment in deciding a case as it related to  
21 the other side of the issue?

22 Isn't the primary thing the fact that Patience Milrod  
23 is, one, a professional? You are a professional by training, by  
24 education, by degree, by certification. That is the essence of  
25 you. You are a professional, and as a professional you may work  
26 for her on one item, and as a professional you may work for me in  
27 a diametric sense.  
28



1           The biggest thing is that we, the public, who are lay  
2 persons, have faith in you and the honesty which is inherent in  
3 your profession.

4           MS. MILROD: Thank you. I appreciate what your point  
5 is, I believe.

6           However, I don't think, as high as Mr. Poochigian's  
7 integrity is, and I am not here to question it, I do not think  
8 that he can conscientiously play both roles and wear both hats.

9           There's an important distinction between being a sitting  
10 judge and being a Commissioner. As a sitting judge, he is no  
11 longer able to go out and represent criminals, if that were his  
12 inclination, or landlords or --

13          SENATOR CRAVEN: No, but you were using sort of a guilt  
14 by association, and the judge in my hypothesis had been  
15 associated as a criminal attorney.

16          MS. MILROD: He continues to represent landlords even as  
17 he sits on the Commission. And I think that is the crux of the  
18 problem.

19          It's not like a sitting judge who leaves practice, who  
20 resigns an active status in the State Bar in order to don the  
21 robes and assume the bench.

22          This is a different situation. This is a situation  
23 where Mr. Poochigian continues -- he represents, it's my  
24 understanding that he represents owners of thousands of units of  
25 rental housing in Fresno. He represents, apparently, the CHAFA,  
26 California Housing and Financing Agency units, or at least has  
27 done. He represents 221(d)(3) units, lots of them, and continues  
28



1 to do that and makes substantial -- I can't -- obviously I don't  
2 have access to these figures, but he makes a substantial portion  
3 of his income from representing landlords.

4 SENATOR CRAVEN: What you're saying is that  
5 representation negates his opportunity to make an honest  
6 decision.

7 MS. MILROD: I do --

8 SENATOR CRAVEN: I don't agree with that at all.

9 MS. MILROD: Okay, this is my position, that he cannot  
10 be a conscientious Commissioner and also be a conscientious  
11 lawyer.

12 That's not to say he won't try, or that he's on there to  
13 be, you know, some kind of landlords' puppet.

14 SENATOR CRAVEN: Well at least you're giving him an "A"  
15 for trying. That's better than you have heretofore.

16 MS. MILROD: I told you, I like the guy.

17 (Laughter.)

18 MS. MILROD: Another matter that gives me a great deal  
19 of concern is the fact that not only does he represent landlords,  
20 but he represents landlords who are charged with discriminating.  
21 And he doesn't seem to have any -- this doesn't seem to cause him  
22 any problems.

23 I represent 19 Laotian families who were evicted en  
24 masse in a wholesale eviction. It was a clear violation of the  
25 various federal and state prohibitions against housing  
26 discrimination.





1 Mr. Poochigian represented the landlords, it's my  
2 understanding. I wasn't involved in the case from the beginning,  
3 but it's my understanding he represented the landlord through the  
4 initial DFEH investigation, or what ever there was. There was a  
5 determination at the DFEH level that this was so gross and  
6 egregious, and it was so clearly a pattern and practice of  
7 discrimination, that the matter would be referred to HUD. He  
8 represented them through the HUD investigation, which required  
9 production of reams and volumes of documents, and that he  
10 represented them through the conciliation.

11 Now, at the conciliation he attended and he brought his  
12 clients, and I attended and I brought my clients. My clients all  
13 speak only Laotian, and we brought an interpreter. And I found  
14 that Mr. Poochigian's attitude, and this disturbed me a great  
15 deal, I found that his attitude was not respectful of my clients.

16 Now, we've all sat across the table from people with  
17 whom we disagree, and we've all found it possible to be at least  
18 respectful. And I found that he made a number of comments that  
19 were demeaning, and I don't know whether they were interpreted, I  
20 trust that they were not.

21 But his attitude went over the line of zealous advocacy.  
22 It was more than was necessary.

23 And it causes me a great deal of concern that somebody  
24 who is -- who is going to be charged with zealously enforcing our  
25 antidiscrimination housing laws can take the attitude such as he  
26 took in our conciliation meeting.  
27  
28



1           It's my information he's represented at least one other  
2 landlord in the DFEH proceedings. I believe there were two. And  
3 again, this hasn't seemed to cause any difficulty.

4           His Elks Club membership has already been mentioned. I  
5 think that's a further indication of his --

6           SENATOR CRAVEN: Elks Club?

7           MS. MILROD: Yes.

8           SENATOR CRAVEN: Do you mean being an Elk is bad, or  
9 what?

10                           (Laughter.)

11           MS. MILROD: No, being an Elk is wonderful.

12           I understand that if you're an Armenian, and you wanted  
13 to be an Elk, for a long time you had to go to San Francisco  
14 because they didn't want any Armenians in the Elks Club in  
15 Fresno. You had to go to San Francisco and join in San  
16 Francisco, and then associate your membership down to Fresno.

17           So, I don't know whether that was still true when  
18 Mr. Poochigian joined, but it --

19           SENATOR CRAVEN: You mean that Mr. Poochigian has been  
20 preyed upon in a discriminatory sense?

21           MS. MILROD: I have no idea.

22           SENATOR CRAVEN: My gracious, that should inure to his  
23 benefit as he sits in judgment of these cases, because he's  
24 experienced the same thing that you're championing.

25           MS. MILROD: I think he's already made that point.

26           My point is this: that the Elks Club does not admit  
27 women. It may see itself compelled, given recent Supreme Court  
28



1 decisions, I don't know, but at this point it still doesn't admit  
2 women. For many years it didn't admit people of color at all.

3 And I think that somebody who can be a member of an  
4 organization that knowingly excludes from its membership the  
5 various protected classes, and the protected classes that  
6 supposedly are in favor of whom Mr. Poochigian is supposed to be  
7 enforcing the law, that gives me a problem.

8 I don't see it as a big, major problem; I don't see  
9 being an Elk as, you know, some kind of criminal, immoral act.  
10 But I do see that somebody who's an Elk should not be sitting on  
11 the Commission. That's my only point.

12 SENATOR CRAVEN: Have you ever talked to an Emblem Club  
13 member?

14 MS. MILROD: No.

15 SENATOR CRAVEN: Do you know what an Emblem Club member  
16 is?

17 MS. MILROD: No.

18 SENATOR CRAVEN: You don't know?

19 MS. MILROD: No.

20 SENATOR CRAVEN: With all your great and vast knowledge  
21 of the Elks you should know who Emblem Club members are. They  
22 are the wives of the members of the Elks Club, and I have known  
23 many of them over the last 40 years, and I've never heard one  
24 complain about the fact that each of them was not eligible to  
25 become a full-fledged antler bearing Elk.

26 (Laughter.)  
27  
28





1 MS. MILROD: Well, maybe you've been inquiring of the  
2 wrong population.

3 SENATOR CRAVEN: I don't know, it's a big club.

4 SENATOR PETRIS: They would be Does.

5 SENATOR CRAVEN: That's true. That may be one of the  
6 reasons, Nick.

7 MS. MILROD: May be.

8 There are a lot of things for which Mr. Poochigian might  
9 have been nominated. You might even find me up here supporting  
10 him.

11 I just do not feel he's appropriate to sit on this  
12 Commission given the Legislature's mandate about what this  
13 Commission is supposed to do.

14 And I think this Committee, in deciding who will sit on  
15 the Commission, has got to take that into consideration. And  
16 that causes me a very great concern, and I trust it also causes  
17 the Members of this Committee at least some concern.

18 CHAIRMAN ROBERTI: Mr. Poochigian, is your law practice  
19 primarily one of representing landlords in discrimination cases?

20 MR. POOCHIGIAN: No, sir.

21 Mr. Chairman, to my knowledge, although Ms. Milrod  
22 referred to another matter with DFEH -- I don't say this to hide  
23 the ball -- I really don't recall any other case involving  
24 discrimination in which I've been involved.

25 If I'm disqualified because I've not been a civil rights  
26 advocate, then so be it, but I have not been engaged in civil  
27 rights practice in landlord tenant law or otherwise but for the  
28





1 limited exposure I had to the one case, which I understand is  
2 ongoing and is being litigated in the federal courts today.

3 My -- the extent of my practice in the area of landlord  
4 and tenant is probably -- the majority of my practice, I would  
5 say in fairness, a vast majority of my practice in that  
6 particular area is in landlord representation. That's where the  
7 money is, and that's what I've chosen to do, and it's a bread and  
8 butter part of my practice, but it takes no more than about 20  
9 percent of my time.

10 Eighty percent of my time is devoted to other areas of  
11 practice, and I think that most small, sole practitioners in most  
12 towns the size of Fresno or smaller do do a degree of landlord  
13 representation.

14 If I may, Mr. Chairman, I don't know whether this is the  
15 time, Ms. Milrod has not finished her presentation. I have some  
16 comments that I'd like to offer in rebuttal both to her comments  
17 and --

18 CHAIRMAN ROBERTI: Rebuttal, straight out rebuttal, that  
19 can wait. You will get a chance for rebuttal.

20 MR. POOCHIGIAN: Yes, sir.

21 CHAIRMAN ROBERTI: Take notes.

22 MR. POOCHIGIAN: Thank you.

23 My answer to your question is no, the civil rights area  
24 is not the area that I practice in.

25 MS. MILROD: And of course we don't dispute that.

26 The private practice in which Mr. Poochigian is  
27 involved, as he's indicated, he does represent a substantial  
28



1 number of landlords. Before the Wolfson case, Marina Point vs.  
2 Wolfson that determined that in fact discrimination against  
3 children is not permitted under the Civil Rights Act, Mr.  
4 Poochigian represented numbers of landlords who wanted to turn  
5 family apartment complexes into adult only complexes. And this  
6 was not a situation in which there were plans to make it a Senior  
7 complex, provide special kinds of provisions for Senior citizens.  
8 This was a situation in which landlords simply saw it more  
9 convenient not to have children in their complexes. And in fact  
10 large numbers -- at one point he was representing a large number  
11 of units where families were being evicted, not because they had  
12 not paid their rent, or trashed their units, or anything else,  
13 but because they simply had children in their units.

14 When it was brought to his attention, first of all, that  
15 this was creating hardships for the families, and second of all  
16 that there was a disproportionate impact on people of color, on  
17 families of color, he did not find this persuasive at all, and  
18 obviously he continued to do what he had to do, which was  
19 evicting these families.

20 All of which comes down to one question, and that is  
21 whether or not Mr. Poochigian's philosophy is such that it would  
22 be appropriate for him to sit on this Commission.

23 He has expressed himself. He has described himself as  
24 an ultra conservative, and that's fine, but he has also indicated  
25 as part of his political philosophy --

26 MR. POOCHIGIAN: Excuse me.  
27  
28



1 Mr. Chairman, I have not described myself as ultra  
2 conservative, and I'd like the record to reflect that.

3 I don't consider myself ultra conservative, and I resent  
4 that characterization.

5 MS. MILROD: Well, then my information is incorrect and  
6 I'll take it up with my informant.

7 More importantly is his philosophy has included -- or  
8 it's my understanding that he has indicated that a landlord or  
9 small business person should have a maximum amount of freedom  
10 with a minimum amount of regulation. And I don't purport to  
11 represent that as a quote exactly, but it's been Mr. Poochigian's  
12 position that a landlord should have freedom to do what he or she  
13 wants to do with the units that they own.

14 And I submit to this Committee that that position is  
15 diametrically opposed to the position that a Commissioner must  
16 take. What a Commissioner must say is: A landlord's right to  
17 dispose of his or her unit as they choose is limited by the laws  
18 of the State of California that prohibit invidious  
19 discrimination.

20 I'm not saying that Mr. Poochigian would support  
21 invidious discrimination, but it's his position that the landlord  
22 should be able to do what ever. And that has been his position  
23 in the past and particularly in these cases where there were  
24 children who were -- families who were being evicted.

25 Again, I would remind this Committee that it is this  
26 Committee's duty to ensure that the people who sit on that  
27 Commission will effectuate the Legislature's intent, and that  
28





1 intent was aggressive enforcement of the State's civil rights  
2 statute.

3 I would also bring very briefly to the Committee's  
4 attention the fact that -- of Mr. Poochigian's record on the  
5 Commission since he's been sitting. There's at least one case  
6 that was decided pro-complainant, and apparently his input -- and  
7 obviously other Commissioners had to vote with him -- but as you  
8 have seen, he's very articulate, he's very intelligent, he's very  
9 effective. He believes this is an advantage on the Commission.  
10 I would submit that possibly it gives him a lot more power than a  
11 lay person sitting on the Commission to accomplish his particular  
12 political point of view.

13 And I would submit he has informed this Committee that  
14 he has no agenda. And I would ask this Committee to look at his  
15 record on the Commission, because his record on the Commission  
16 shows, first of all, that he has a lack of appreciation for  
17 precedent, and has made every effort to narrow the laws, to  
18 narrow their application, to give them the strictest, narrowest  
19 kind of application so as to dismiss complaints, and dismiss  
20 petitions, rather than giving the law a broad kind of a  
21 construction so as to protect tenants and employees.

22 SENATOR CRAVEN: May I, Ms. Milrod --

23 MS. MILROD: I'm almost done.

24 SENATOR CRAVEN: I was just going to ask, and this is  
25 something, I guess, you couldn't do in court.

26 What is your opinion of the other members of the  
27 Commission? Do you think they do their jobs appropriately or  
28 well?



1 MS. MILROD: If I'd known you were going to ask me that  
2 I would have done some homework on the issue. I haven't, so --

3 SENATOR CRAVEN: So he's really the only one that you've  
4 paid any attention to?

5 MS. MILROD: That's right.

6 SENATOR CRAVEN: But you have followed very closely all  
7 of the decisions that have been made by the Commission, have you?

8 MS. MILROD: I have read a number of decisions in which  
9 he was personally involved, yes.

10 SENATOR CRAVEN: Since the advent of his being on the  
11 Commission?

12 MS. MILROD: That's correct.

13 SENATOR CRAVEN: Very well, fine.

14 MS. MILROD: I think the thing that this Committee has  
15 to consider most carefully is the fact that he has made an effort  
16 where ever he had the opportunity to change the standards under  
17 which the Commission decides the cases before it. He has made an  
18 effort to undo the California precedent that requires strict  
19 liability on the part of the employer where there's been  
20 harassment, racially motivated harassment of an employee.

21 The case in which he made this, I believe as part of a  
22 dissent, was a grotesquely egregious sort of example of racial  
23 hatred that went on over years, and where in fact the supervisors  
24 of the offending party were informed of the problem and whatnot,  
25 and at the same time Mr. Poochigian took the position that the  
26 employing hospital should not be liable. And that is a major  
27 departure from precedent in this area, and that concerns us.  
28



1           SENATOR CRAVEN: Did the Commission in this instance  
2 veer from the thrust and statement of the law?

3           MS. MILROD: The Commission itself did not. The  
4 majority of the Commission did not.

5           SENATOR CRAVEN: But some of the Commissioners were  
6 operating in juxtaposition to the law?

7           MS. MILROD: Juxtaposition, you mean consistently with  
8 the law?

9           SENATOR CRAVEN: Yes, in other words, they were not in  
10 conformance with the law.

11          MS. MILROD: I don't remember if Mr. Poochigian was  
12 alone in his dissenting opinion.

13          SENATOR CRAVEN: Really the point that I'm getting at, I  
14 suppose, is, one, there are a lot of things that we do here in  
15 the legislative sense which are -- you used the term once or  
16 twice "standards"; we use the term "policy". Now, policy is not  
17 necessarily statutory, so policy is a flexible thing where  
18 statutes are inflexible, although they may be changed, of course.

19          But I just wanted to clarify the point that what he did  
20 or caused the Commission to do was in keeping with the law and  
21 not a violation of the law.

22          MS. MILROD: On the contrary, it was inconsistent with  
23 binding precedent, the body of precedential opinions that the  
24 Commission has issued and also with California --

25          SENATOR CRAVEN: The Commission has issued, but how  
26 about the people how make the laws for the Commission? Was it  
27 diametric to that or to their decision?  
28





1 MS. MILROD: Yes, because the function of the  
2 Commission's precedential decision and of California Court  
3 precedent is to interpret the law, and the law means what --

4 SENATOR CRAVEN: Did anyone appeal it?

5 MS. MILROD: I don't know whether it's been appealed.  
6 There was no need to appeal it because it was a dissent.

7 What I'm saying is, he has -- I would submit that he  
8 does have an agenda, and that his agenda can be seen from his  
9 concurrences and his dissents in which you can see that he wants  
10 to take one standards that's been well established and change or  
11 undermine or eliminate it.

12 SENATOR CRAVEN: I think you're accusing him of being  
13 furtive and arcane.

14 MS. MILROD: I'm accusing him of doing what every  
15 Justice on the Supreme Court might do, whatever.

16 What I'm saying is, this Commission --

17 SENATOR CRAVEN: He's in pretty good company there.

18 Laughter.)

19 MS. MILROD: What I'm saying is that this Committee  
20 needs to attend to the Legislature's mandate in creating and  
21 passing this Act and in creating the Commission.

22 And that Mr. Poochigian's record on the Commission shows  
23 that he's not interested in enforcing the law according to the  
24 way it's been mandated under the Legislature. That's my only  
25 point.

26 SENATOR CRAVEN: Well, my thought, and you have to  
27 excuse me, Ms. Milrod, as a layman I'm not as up to speed as  
28





1 those of you who are professionals are, but it occurs to me that  
2 no matter how many people serve on the Commission -- and I don't  
3 know, are there five members?

4 MS. MILROD: Seven.

5 SENATOR CRAVEN: Seven members of the Commission.

6 And I suppose to render an opinion you have to have four  
7 members in concert.

8 He is only one vote, I would think. So, some of the  
9 other members of the Commission must have abandoned what you have  
10 referred to heretofore as precedent because of the logic which he  
11 must have espoused.

12 MS. MILROD: As I indicated to you, this was a dissent.

13 CHAIRMAN ROBERTI: Ms. Milrod's testimony is very, very  
14 interesting, but it has proceeded a little while.

15 MS. MILROD: I'm over; I'm through.

16 CHAIRMAN ROBERTI: If you can answer Senator Craven.

17 MS. MILROD: Well actually, this was a dissent, as I  
18 indicated. I have no idea if he was joined.

19 I would like permission to read into the record a letter  
20 submitted by a former Commissioner on the State Commission. It's  
21 relatively brief, and if I might have permission to read that,  
22 that will conclude my testimony.

23 SENATOR DOOLITTLE: Is that the text of the letter right  
24 there, Mr. Chairman? If it is, that's a several page letter.

25 May I just ask that we append it to the record?

26 MS. MILROD: It's double-spaced, two pages --

27 SENATOR CRAVEN: From whom is it, Ms. Milrod?  
28



1 MS. MILROD: I'm sorry?

2 SENATOR CRAVEN: Who is the Commissioner?

3 MS. MILROD: The Commissioner is Virginia Sanchez. She  
4 was a Commissioner on the Commission from 1982 until 1984.

5 SENATOR CRAVEN: Could we just enter it into the record?  
6 I'm sure that she's probably saying pretty much what you have  
7 said.

8 MS. MILROD: Well, she has some different sources of  
9 information and from different perspectives.

10 As the Chair wishes.

11 CHAIRMAN ROBERTI: How lengthy is it?

12 MS. MILROD: It's two and a quarter or a fifth --

13 CHAIRMAN ROBERTI: What I would suggest we do is, do you  
14 have that in copy?

15 MS. MILROD: Yes, I do.

16 CHAIRMAN ROBERTI: Please submit it to the Committee in  
17 copy form.

18 MS. MILROD: To whom should I provide it?

19 CHAIRMAN ROBERTI: To me. We'll make sure that each  
20 Member of the Committee receives it.

21 That is from whom?

22 MS. MILROD: This is a statement submitted by Virginia  
23 Sanchez.

24 CHAIRMAN ROBERTI: And she's an individual or--

25 SENATOR CRAVEN: A former Commissioner, right?

26 MS. MILROD: She's a former Commissioner.

27 CHAIRMAN ROBERTI: Fine, thank you.  
28



1 MS. MILROD: Thank you.

2 MR. POOCHIGIAN: Mr. Chairman, would I be entitled to a  
3 copy of that as well?

4 CHAIRMAN ROBERTI: Yes, Mr. Poochigian will be able to  
5 get a copy of that as well.

6 MS. MILROD: I have another one; I'll give it to him.

7 CHAIRMAN ROBERTI: Is there another opponent?

8 MR. WILLIAMS: My name is Delmar, D-e-l-m-a-r, Williams.  
9 I'm President of the El Cerrito Branch of the NAACP.

10 I want first to make a comment in that capacity. At our  
11 last membership meeting, the group unanimously -- the vote was  
12 unanimous in being in opposition to the confirmation of the  
13 Nominee. This was an individual branch decision, in a sense  
14 independent to but also in the spirit with the overall State  
15 NAACP.

16 That's all I want to say about NAACP.

17 The bulk of my remarks have to do with my history as an  
18 employee of FEPC. I left the employment in 1968, in February of  
19 1968.

20 I was there during the early years of FEPC. As you  
21 recall, it came into operation in 1960. During the years from  
22 1960, '61 and even in '62, the minority community was very  
23 skeptical --

24 CHAIRMAN ROBERTI: Could I just interrupt for one  
25 second, Mr. Williams.

26 After Mr. Williams' testimony, we're going to recess for  
27 five minutes so that the Reporter can change her tape and that we  
28 can conduct some other business that's pending.





1 Mr. Williams.

2 MR. WILLIAMS: I was saying that during the early years,  
3 1960, '61 and into '62, the general community was very skeptical  
4 of the effectiveness and the purposes of the FEP Commission. At  
5 that point it was only Fair Employment and not Fair Employment  
6 and Housing. They saw it as just another tool of the  
7 Establishment.

8 But under the leadership and direction of the then five  
9 Commissioners, a different view and a different assessment of FEP  
10 was developed. The Commission earned the respect and confidence  
11 of people from all aspects of the California community. The  
12 confidence was reflected in the fact that employers of large  
13 corporations, as well as smaller companies, voluntarily sought  
14 the assistance of the FEPC Commissioners and staff. It was not  
15 just a matter of complainants coming to the Commission for  
16 relief.

17 This confidence was reflected by the fact that in the  
18 summer of 1965, when numerous of our California cities were faced  
19 with the prospect, in fact the fact, of a long hot summer in  
20 general, and specifically in August of '65, with the Watts  
21 uprising, the FEPC staff had an opportunity, a unique  
22 opportunity, to test the fact that we thought we had the  
23 confidence of the community. This was done by the FEP staff  
24 having the audacity to go into Watts, into Filmore, and on to  
25 Sacramento Street in Berkeley, and to other places that were real  
26 hot spots, and dangerous for nonminorities. We went in there in  
27 State cars, left our cars unlocked, and went in and talked to  
28



1 people and say, "Hey, you are not forgotten. Something will be  
2 done for you." And not one of us was threatened, or nothing  
3 adverse happened to us. We were able to be an influential  
4 instrument in getting the community to cool it.

5 Finally, I would say that the job of being a staff and a  
6 Commissioner, and I'll just talk about Commissioners since this  
7 is our topic, of the FEPC is not just one of just professional  
8 skill, but it is a sensitivity, and a great deal of understanding  
9 of the people involved. It is not a simple matter of antagonists  
10 and protagonists.

11 It is a matter of being familiar with the purpose, the  
12 intent and the spirit of the law as enacted by the Legislature in  
13 response to the California community.

14 If you will review the statute and the wording of the  
15 statute in 1959, when you enacted it as as State Legislature  
16 overwhelmingly, I think you will find that the importance of the  
17 spirit of the law was very greatly underlined, and the practice  
18 was administered in that spirit by the early Commission.

19 Being a Commissioner is indeed the ability to do a  
20 tightrope walking. It is the ability to empathize with the  
21 complainant as well as the persons or companies that are  
22 complained against. This skill is not developed overnight.

23 Of course, there are individuals who are bright and have  
24 the ability to learn and to grow on the job, or to get what the  
25 Urban League developed and called On the Job Training, OJT.

26 You have heard numerous -- several speakers  
27 unquestionably agree with the fact that the Nominee is indeed a  
28



1 brilliant man, and we were lucky as a community that there was an  
2 opportunity to see what he would do, what direction he would go  
3 on the job in his training on the job. And we find that he is  
4 neglecting to be aware of the purpose, the intent, the spirit and  
5 the need for the law.

6 It is not just looking at the letter of the law, but it  
7 is looking at the frustrations, the deprivations, the needs of  
8 the community. It's looking at the necessity for bringing,  
9 attempting to bring, all of the people into a belief in our  
10 government and the functions of our government so that we can  
11 believe that the Statue of Liberty is speaking to all of us.

12 CHAIRMAN ROBERTI: Thank you very much, Mr. Williams.  
13 We will take a recess for approximately five minutes.

14 (Thereupon a brief recess was taken.)

15 CHAIRMAN ROBERTI: Let us reconvene.

16 Is there any other opposition to Mr. Poochigian's appointment  
17 Mr. Poochigian, you may have rebuttal.

18 MR. POOCHIGIAN: Thank you, your Honor -- I'm sorry, Mr.  
19 Chairman.

20 (Laughter.)

21 SENATOR PETRIS: You've got the right spirit.

22 MR. POOCHIGIAN: First, if I may respond to Ms. Virna  
23 Canson's comments.

24 In a letter to the Sacramento Bee, which I think has  
25 been sent to you, critical of my appointment, there was reference  
26 made to the Armenian Connection and some what I consider to be  
27 ethnically derogatory comments about me and my people, to which I  
28 took great offense.





1           In that letter there is reference to a statement which  
2 was reported by Ms. Canson to have been attributed to me, that  
3 being that I did not know anything about this Commission or the  
4 Department prior to my appointment.

5           I'd like to set -- make the record clear on that. A  
6 comment roughly in that vein was made, I admit. I don't think it  
7 went so far as to say that I had never heard of it. It's  
8 conceivable it went that far, but the context within which the  
9 words were spoken were these, and unfortunately I believe that  
10 some of these comments were made in closed session, and I'm sorry  
11 that I have to, in order to defend myself on this, but since the  
12 cat's out of the bag, I ought to, I suppose, be able to do so.

13           The particular -- on this particular day --

14                   (Chanting from a demonstration taking  
15                   place outside the hearing room.)

16           MR. POOCHIGIAN: I hope they're not against me.

17                   (Laughter)

18           SENATOR CRAVEN: They're against prisons and Armenians.

19           MR. POOCHIGIAN: On this particular day, there was a  
20 debate, a question raised concerning, I believe, certain  
21 regulations, certain regulatory matters, and comments were being  
22 made by some fellow Commissioners and members of the legal staff  
23 of the Commission with respect to the fact that the entire  
24 employer community of California was well aware of the Commission  
25 and the work that it does and the regulations that it  
26 promulgates.





1 I, coming from the background that I do in the Central  
2 San Joaquin Valley, representing all kinds of clients --  
3 landlords, tenants, employers and employees -- was surprised by  
4 those comments because I did not believe that that was correct,  
5 at least as to small employers. I know that large employers are  
6 often times well organized and have to have legal departments,  
7 and all of these kinds of bodies, and what they do, and obtain  
8 copies of precedential opinions. But it was my belief, I hold it  
9 today, that the vast majority of small employers throughout  
10 California have no idea what the Fair Employment and Housing  
11 Commission is.

12 We have to work to change that. There's a California  
13 Round Table for employment and housing set up by the current  
14 Director of which we can all be proud as Californians, and that  
15 work is being done to make the work of the Commission better  
16 known.

17 But in response, in a relatively heated exchange, as I  
18 recall, I made the point that we ought to calm our egos a bit and  
19 not be so sure that everybody knew about the Commission, and I  
20 think I said something to the effect that I knew very little  
21 about this Commission until I got my appointment. That was true.  
22 I said it in that context to make the point that we ought to make  
23 sure that all of the regulations and regulatory work we do and  
24 the opinions that we render are somehow disseminated widely and  
25 broadly throughout the employer community throughout California  
26 so that the problems that we are attacking on the Commission can  
27 be avoided in the future, and so that people are fully  
28 knowledgeable of the laws to the extent that we can educate them.



1 With respect to the --

2 CHAIRMAN ROBERTI: Let me stop you right there.

3 MR. POOCHIGIAN: Yes, sir.

4 CHAIRMAN ROBERTI: I should have mentioned it earlier,  
5 but I read the article that Ms. Canson wrote as well, and I  
6 frankly didn't think there was anything in it aside from the fact  
7 that she didn't support your appointment that you ought to take  
8 offense at, or the Armenian people should take offense at.

9 If my recollection serves me right, there was an article  
10 in the Bee earlier by Mr. Smith in which he indicated that some  
11 decisions the Governor made, it was unfair to criticize him  
12 because of campaign contributions, because after all, these  
13 appointments were only made because of their Armenian extraction,  
14 which is all very fine and good, except the same writer in  
15 question really would never give anybody else that kind of  
16 benefit of the doubt that he gave the Governor under the same  
17 circumstances.

18 I happened to read the article, and I was absolutely  
19 irate, not because the appointments were Armenian, but when a  
20 Democratic Governor was involved, he never got that kind of  
21 consideration. Frankly, I was just shocked by Mr. Smith's  
22 article and by just sloughing off, you know, a legitimate  
23 political controversy by saying: Well, we have to understand  
24 because there's an ethnic appointment involved.

25 So I think in that context, you have to take  
26 Ms. Canson's remark or her letter. I don't think you can take it  
27 directly against Armenians, and certainly not against you  
28 personally, except that she didn't like your appointment.



(Laughter.)

MR. POOCHIGIAN: Thank you, Mr. Chairman.

I guess I'm guilty, as many of us are, as an ethnic American to anything that even comes close to being a slur, and I took it that way. I take your comments to heart.

The point made that I have worked to undermine the work of the Commission by delaying Commission action is categorically and utterly false.

I would point out that there are three main roles played by this Commission as set out in the Act. They include the adjudicative function, where we serve as a quasi-judicial body, hearing cases brought by people, and I referred previously to it being the people's court. That's what it is.

I personally regard that to be paramount. Some may disagree, but I regard to be paramount among our responsibilities.

Other responsibilities include promulgation of regulations. And the third area is the civil rights area where we are akin to the U.S. Civil Rights Commission, convening hearings, hearing reports, and so forth.

We currently have what I consider to be a very large backlog of cases. There are litigants waiting for adjudication of their claims. I am committed to reducing that backlog by expeditious handling of the cases. In that way I resent the suggestion that I am working to delay that process. I am certainly not. I am committed at least as much as any of the other Members of that Commission to achieve that result and get that backlog taken care of.





1           The suggestion that I lack commitment to the principles  
2 for which the FEHC was established is likewise false. I stated  
3 that I'm committed to it. I consider myself a professional. I  
4 also consider myself a sensitive person, a people person. I  
5 believe in people. I believe discrimination has no place in  
6 society, and within the framework of my own background and  
7 experience, and where I come from geographically, and my ethnic  
8 experience, and so forth, I can only do the best I can to make  
9 sure that we all work together to achieve that end. I'm doing  
10 it. I may not be doing it in the way someone else may judge I  
11 should, but I am.

12           Now, with respect to the comment made that I'm  
13 undermining legislative intent, that too I categorically deny.  
14 I, on a number of occasions, have pointed out to fellow  
15 Commissioners and the staff and others who have appeared before  
16 us that I want to follow the will of the Legislature. I am  
17 opposed to undermining the will of the Legislature. I believe in  
18 our democratic system and the way our laws are passed in this  
19 country at this level, locally and at the federal level, that  
20 regulatory bodies must do the best they can to follow the mandate  
21 of the Legislature.

22           I don't -- I never have done anything which I regard to  
23 be a conscious effort to subvert that intent. I believe, in  
24 fact, that I have in every instance done my best to make sure  
25 that we're following what the Legislature intended us to do.

26           Now, next if I can turn to the comments of Patience  
27 Milrod, there's that saying about "with friends like this", but  
28 in any event, we will remain friends.



1           As I said earlier, perhaps 20 percent of my time is  
2 spent on landlord tenant matters, true. I'm a lawyer; as I said,  
3 I'm a professional. As Senator Craven pointed out, it's our job  
4 to do what we do, what we choose to do. A criminal lawyer is no  
5 less qualified to serve as a judge than is a lawyer doing  
6 antitrust work handling a criminal case.

7           We do -- we're trained to be dispassionate. We're  
8 trained to be fair-minded. We're trained to analyze situations  
9 within the legal framework, to look at the law and apply it to  
10 the facts as we understand both the law and the facts.

11          I've done that consistently. I feel duty bound to do  
12 that professionally. I also feel a commitment as a citizen and  
13 serving on this Commission to do that.

14          With respect comments that I at some point may have  
15 appeared to be in the perception of the witness disrespectful or  
16 demeaning in my approach, the particular case referred to is  
17 still in litigation, and I hesitate to say much about it for the  
18 reason that I'm duty bound not to, I think.

19          But I will say that the particular occurrence was in a  
20 conciliation meeting, hearing, with the Department of Housing and  
21 Urban Development. And I believe that if I became at all  
22 discourteous, disrespectful, or in any way seemed to not take the  
23 matter seriously, that the perception was wrongly placed.

24          I was reacting to what I regarded to be a settlement  
25 offer for several million dollars if payable promptly from a  
26 client who later filed bankruptcy who was indeed bankrupt at that  
27 time. I found that to be ridiculous and said so, and I suppose  
28 my outward expressions showed that.



1 But I had no contempt toward the parties. I have the  
2 greatest respect for all people, especially the ethnic minorities  
3 that have settled in the Central San Joaquin Valley, many of them  
4 victims of a war that we were involved in a decade or more ago.  
5 So, I certainly was not disrespectful toward those people.

6 I am an advocate. And as I said earlier, I challenge, I  
7 try to challenge, I don't always do the best job, but I do the  
8 best I can in any given instance, to challenge the thoughts and  
9 the comments of the people who are presenting cases to us, as you  
10 do in the the role that you play as Legislators. And I do it in  
11 order to get the most information out, in order that we can have  
12 the best final product that we can, whether it be a case, an  
13 adjudicated case, a regulation, or a report resulting from a  
14 civil rights hearing.

15 I will continue to do that if you grant my respectful  
16 request for confirmation. I will continue to work as hard as I  
17 have to date, and I'm very proud of how hard I have worked. I'll  
18 continue to work that hard and will so in the future.

19 Now, with respect to the comment attributed to me that  
20 the landlord is free to do with his units what he wishes, I doubt  
21 that I would have ever said such a thing. I don't know from what  
22 context it was -- the words may have been taken.

23 I don't, obviously, believe that a landlord can do  
24 anything he wishes, any more than I believe that an employer can  
25 do anything that an employer wishes.

26 I'm an employer as well. I represent employers  
27 occasionally as well. I certainly don't think I'm disqualified  
28 from serving because I represent employers.





1           Eighty to ninety percent, perhaps more, of the work of  
2 the Fair Employment and Housing Commission is in the employment  
3 area, not the area of housing. Not that housing is not just as  
4 if not more important, but the work of the Commission is in the  
5 employment area.

6           So if I could be disqualified because I happen to have  
7 an interest in a limited partnership that has some rental units,  
8 then likewise I'm disqualified because I employ a secretary, or  
9 that I represent people who employ others.

10           It just isn't so. The key in my opinion is whether or  
11 not I can be fair, deliberate, determined to carry out the law,  
12 committed, sensitive. I believe I'm every one of those things.

13           With respect to the kind of clients I have, I would like  
14 to point out that I have represented tenants on occasion. I've  
15 represented -- one of my clients is the Organization of Older  
16 Americans in Fresno. I've been involved in HUD projects where  
17 we've sought to get approval to build projects for low income  
18 projects for older Americans. I've worked hard in that area.

19           It's not that I'm some landlord lackey serving on this  
20 Commission trying to undo what the Legislature has intended and  
21 what the courts have intended.

22           With respect next -- and I'm almost through; I hope I'm  
23 almost through; I'm sorry that I'm taking so much time -- this  
24 idea that I have some disproportionate power or influence over  
25 the rest of the Commission and the staff, and the whole body of  
26 people that are involved in the work of the Commission is  
27 absolutely absurd. I can't believe -- if it were true, I  
28





1 wouldn't be doing this; I'd be doing something else if I had that  
2 power to mesmerize and move mountains. I don't have it.

3 I'm a regular guy. I'm a hard working lawyer. Someone  
4 called me brilliant. I'm not brilliant; I'm not half as smart as  
5 some of the staff members on our Commission who are very bright,  
6 well-schooled lawyers doing their best to advance the law as they  
7 understand it.

8 I'm one person. I say what I say. When I feel there's  
9 something to say, I push the points I feel are important, and I  
10 think that we're coming out with greater, better decisions as a  
11 result of that.

12 It's been pointed out or suggested that I don't follow  
13 precedent. That too is absolutely false.

14 I believe in stare decisis with the courts. I believe  
15 in precedent with the Commission.

16 The case referred to as an "egregious" one, involving  
17 supervisor liability, or employer liability for supervisor  
18 misconduct, was not so egregious.

19 Senators, that case involved a question which was, as I  
20 understand it, relatively if not totally unique, a new point, a  
21 new issue. It had to do with whether an employer is liable for  
22 the harassing conduct or the misconduct of a supervisor who is  
23 not the supervisor of the person who is harassed.

24 Now, that's a relatively tough point. It's an esoteric  
25 point; it's a legal one. We thrashed the issue out for many  
26 months. It was a tough case. It came down 4-3 on this  
27 Commission.  
28



1 I wasn't standing out there alone. Three Commissioners  
2 -- two Commissioners joined me in dissent. There were three  
3 dissenting Commissioners in that case.

4 If I may just throw out the example that I've used  
5 before: If you have a large multinational oil company that has  
6 working for it the brightest man in the world, who is an ethnic  
7 -- has some ethnic identity, perhaps an Asian from Hong Kong  
8 who's a graduate of MIT, and he's a brilliant man. And he goes  
9 out, part of his duties, he does independent research, he makes  
10 \$500,000 a year. And part of his duties are to go out to oil  
11 sites once a day and check some machinery there. And while he's  
12 there, an employee at the lowest possible level, or should I say  
13 this, a supervisor who has two or three employees working under  
14 him, all of them making barely over minimum wage, harasses this  
15 man.

16 I question whether the multinational corporation should  
17 be responsible for punitive and compensatory damages to this  
18 brilliant man when he is of significantly higher status, the  
19 harassed party is of significantly higher status, than the  
20 harasser.

21 In the case in question we had someone who was less  
22 educated, earned less money, lower on the totem pole than the  
23 person who was purportedly harassed. I believe the person was  
24 harassed.

25 I dissented on legal grounds because I felt that a  
26 better rule would be to evaluate what the relative relationships  
27 between the parties are, what the educational level, relative  
28



1 educational levels, relative pay, and so forth, of the parties  
2 were within the corporation in assessing strict liability against  
3 the employer.

4 I know I'm getting into a real ethical esoteric area.  
5 There's no question that the law is that were an employee is  
6 harassed by a co-worker with the knowledge and consent, or  
7 acquiescence, or ratification of a supervisor, that the  
8 employer's liable.

9 I don't question that precedent at all. It's absolutely  
10 correct. I agree with it.

11 My only problem was in this unique case, where it was  
12 contended, at least by some, that the employer and the immediate  
13 supervisors who had a right to discipline were not aware of the  
14 harassment, and someone in a different department of lower grade  
15 harassed the person, I questioned whether strict liability, the  
16 legal standard of strict liability, ought to be applied instead  
17 of an evaluation of the knowledge of the supervisor, what action  
18 was taken, if any, in response to the harassment, and so forth.

19 That's good law. I believe a good judge would say  
20 that's good law, and I don't think that I should be subject to  
21 criticism for doing it.

22 With respect finally to the comments by the gentleman  
23 from the El Cerrito Chapter of the NAACP, he talked about the  
24 civil rights struggle, as did Virna Canson. They emphasized,  
25 Virna to great end emphasized that C. L. Dellums was a hero in  
26 that movement and was one of the moving forces in establishing  
27 the then FEPC.  
28





1 I understand that that is absolutely true. I agree with  
2 it. She's right. I wasn't born then.

3 I don't think that disqualifies me. I respect Mr.  
4 Dellums. I've met Mr. Dellums on one occasion and had the  
5 opportunity to hear him speak about the history of the civil  
6 rights struggle, and about the history of the Fair Employment and  
7 Housing Commission. I admire him greatly. I respect what he had  
8 to say. I respect what he stands for.

9 I don't sit here suggesting to you that I'm better than  
10 C. L. Dellums. And I didn't replace C. L. Dellums.

11 I was asked to serve. I was delighted to have the  
12 opportunity, and I respectfully request that you, each of you,  
13 accept my nomination and confirm my appointment.

14 Thank you.

15 CHAIRMAN ROBERTI: Thank you very much, Mr. Poochigian.

16 Do I hear a motion?

17 SENATOR CRAVEN: So move, Mr. Chairman.

18 CHAIRMAN ROBERTI: Senator Craven makes a motion that  
19 Mr. Poochigian be confirmed, a recommendation be made to the  
20 Floor for confirmation.

21 Senator Petris on the motion.

22 SENATOR PETRIS: Yes, I'll try to be brief.

23 I was very impressed with Mr. Poochigian when we had our  
24 conference, and he came highly recommended by friends of mine.

25 I think you've answered most of the questions. Let me  
26 ask in two or three areas here.  
27  
28



1           As a lawyer, knowing the language about construction of  
2 a statute, would you consider yourself a strict constructionist  
3 or a liberal in the applications of these statutes and  
4 regulations?

5           MR. POOCHIGIAN: Well, I can't, I think, answer that yes  
6 or no for the reason that in general, I would say that I do  
7 believe in a fairly or relatively strict construction of statute.  
8 That is true.

9           In the case of the Fair Employment and Housing  
10 Commission, however, part of that statute itself states that its  
11 provisions should be liberally construed in order to carry out  
12 the intent and meaning of the Act. So we have there a balancing  
13 that has to take place, I think. So while I do tend to believe  
14 that the statutes should be strictly construed, in this case we  
15 have a statute telling us: Be liberal about it, fellow.

16           So, I look upon the statute in that context.

17           SENATOR PETRIS: Well that's the reason for my question,  
18 because I think we're all either strict or liberal, depending on  
19 whether we like the statute. But when we're administering it,  
20 and it's our duty, I think it's very important that that part of  
21 the law be given considerable attention.

22           We do that in most of the human rights, you might say,  
23 social rights statutes in our state. You know, in a lot of the  
24 labor legislation, sometimes an entire chapter will say: It's  
25 the intent of the Legislature that this chapter will be liberally  
26 construed. That's a signal to the courts and, you know, the  
27 federal government does that, too. I'm not telling you anything  
28 new as a lawyer.



1           The reason I ask is that some of the critics have felt  
2 that to the extent that you have insisted on a very strict  
3 construction, what they see as a strict construction, it really  
4 violates that provision which says: Wait a minute; when the case  
5 is this close, the tie base goes to the runner. The runner is  
6 usually the complainant who feels he's been aggrieved.

7           Let me ask you, for example, on the Marina Point case  
8 that's cited by the Supreme Court on discrimination against  
9 children, families with children.

10          What is your attitude toward that decision? Do you  
11 think that's a --

12          MR. POOCHIGIAN: I frankly, to prove that I'm not as  
13 brilliant as I've been characterized, I don't claim to be totally  
14 knowledgeable on the Marina Point case. I know that there are  
15 two cases that have come up that are in conflict.

16          I don't have a strong opinion about it. I kind of am  
17 one that's waiting to see what the Supreme Court does with the  
18 issue, as I think it's going to be doing.

19          SENATOR PETRIS: They've decided that one.  
20 Marina Point vs. Wolfson they --

21          MR. POOCHIGIAN:: They held in that case, as I recall,  
22 that you couldn't discriminate.

23          SENATOR PETRIS: The history is that a lot of landlords  
24 were using different tactics to reject the family just because it  
25 had children and trying to use other means. For example, a lot  
26 of them have been increasing their security deposits, sometimes  
27 to three months' rent for families with children. Whereas that  
28 wouldn't apply otherwise.





1           And I guess the essence of the decision of the Court is,  
2 well, you should apply the same standard to them as anybody else;  
3 that is, can they pay the rent or not. They make out a form of  
4 financial information just like anyone else. If they don't  
5 qualify, there's no problem. You don't have to rent to them. Do  
6 they have a good reference from a prior owner, prior landlord.  
7 If they can't come up with that, you don't have to rent to them.  
8 It probably means their children were destructive. I mean,  
9 that's a logical conclusion if a family can't come up with a good  
10 recommendation from some prior place.

11           But anyway, you haven't gone --

12           MR. POOCHIGIAN: Senator, I don't have any problem with  
13 the idea that housing ought to be open to people of all ages as  
14 long as -- and all family size as long as health and safety codes  
15 are adhered to and so forth. I don't have any problem at all.

16           And in my private practice, and this is the only  
17 experience I can draw upon, I will tell you that without fail  
18 I've always, when any question has come up about security  
19 deposits, or anything like that, I have always uniformly advised  
20 my clients to make sure that all tenants are treated the same  
21 without regard to race, family size, children, married,  
22 unmarried, anything of that sort. That's my understanding of the  
23 law, and I follow it.

24           SENATOR PETRIS: I have a bill I want to get your  
25 impression on. My decision doesn't rise or fall on that, but  
26 it's part of the spirit of the statute.





1 We have found increasing complaints, we now have them  
2 from about ten counties and I guess if we searched around we'd  
3 have more, about discrimination against tenants, prospective  
4 tenants, on the basis of their source of income.

5 I don't know whether it's come to your attention in your  
6 county or not, but the problem is that some people simply can't  
7 get accommodations because they're on welfare, or they're on  
8 Social Security, or they're on Workers' Comp. temporarily, or  
9 permanent disability, where it's a fixed amount and it's a steady  
10 amount. There's no problem about security, but since it's not  
11 full-time regular employment, some people just arbitrarily turn  
12 them down.

13 So my bill says, we just add that to the list of a  
14 class. We're identifying another class that's being  
15 discriminated against, that is suffering discrimination right  
16 now.

17 Now, I ask that for two reasons. One is, I'd like to  
18 know what your attitude would be toward a bill of that nature.

19 Secondly, involved in that is a dispute between the  
20 Department and other members of the official housing regulation  
21 family in California. One groups says: This is an excellent  
22 bill and we should support it. The other says: It's draining  
23 the resources of the Agency, and the attorney should not be  
24 called on to be dragged into this by expanding the list. And  
25 they say: The list is big enough now, and we have to concentrate  
26 on what we have, and concentrate on the employment part and not  
27 expand the list.  
28



1 I don't know whether it's come before your Commission  
2 for discussion officially or unofficially, but could you comment  
3 first on a bill that would expand protection to people who are  
4 having this problem? And if not, how else the Commission itself  
5 might be able to be helpful?

6 MR. POOCHIGIAN: Well, I am -- it strikes me first that  
7 one should not be rejected from renting or doing anything because  
8 of the nature of the source of their income. The examples that  
9 you cited were involving people on the lower end of the  
10 socio-economic ladder. You may have someone that's very wealthy  
11 that clips coupons that somebody doesn't like --

12 SENATOR PETRIS: As a matter of fact, we have a  
13 complaint exactly like that; a woman who stayed home all day,  
14 didn't go out punch a clock, but who had substantial investments  
15 and was clipping coupons and was rejected.

16 MR. POOCHIGIAN: Of course, I just -- that doesn't --

17 SENATOR PETRIS: It isn't limited to the lower income.

18 MR. POOCHIGIAN: Yes, and it's wrong. And I don't think  
19 that any right-thinking person would suggest that it isn't wrong,  
20 I would hope.

21 But as far as the expansion of the various areas that  
22 the Fair Employment and Housing Act covers, I have -- to be  
23 perfectly frank with you, there is this -- this is another  
24 balancing area, I think. Because you have on the one hand people  
25 like Virna Canson, and I don't mean to speak for her, but I know  
26 that in speaking or hearing a speech, a talk by C. L. Dellums, I  
27 know that the groups that they represent are concerned about the  
28



1 expansion. That's my understanding. They're concerned about the  
2 expansion in certain areas. For example, pregnancy, pregnancy  
3 leave, disability leave, and some of those areas of concern. And  
4 the feeling is that by doing so, it waters down the statute.

5 Now, the area you're talking about tends to address  
6 itself to the areas of concern that groups like this historically  
7 would be interested in, so I suppose they would treat that a  
8 little bit differently. But I do see a concern about the  
9 watering down.

10 At the same time, I'm not so certain that that kind of  
11 arbitrary discrimination -- well, I'm certain that it should not  
12 be permitted.

13 So, I don't know how to answer your question. I don't  
14 know if I could support the bill without actually carefully  
15 reading it. I don't know -- of course, I don't have the -- I  
16 don't vote on it.

17 But the idea doesn't offend me, let me say that. That's  
18 all I can say.

19 I can't go to bat for it without knowing a little more.

20 SENATOR PETRIS: Let me ask you about another bill. The  
21 Governor vetoed last year a bill that would define AIDS as a  
22 physical handicap for purposes of discrimination, saying that  
23 present law is adequate.

24 So I'd like to ask you if you think the present law is  
25 adequate, and if AIDS would be included in your thinking on the  
26 Commission, since the Governor thinks it's already covered?

27

28





1           If not, do you think there ought to be a statute to  
2 cover it?

3           MR. POOCHIGIAN: Well, I can say two things about that.

4           First, I think that my views would be philosophically  
5 consistent with respect to the AIDS issue and the issue you  
6 raised. Different as they are in nature, but nevertheless, I  
7 think that my statement of philosophy would be the same, although  
8 it wasn't very clearly stated.

9           Having said that, though, I can't ethically, I think,  
10 comment on that. It's my understanding, and I've been advised by  
11 Commission Counsel, that we are dealing with that very issue.  
12 There's an open case that's before us now, and it would be, I  
13 believe, wrong for me to talk about it.

14           SENATOR PETRIS: Is the issue whether you're going to  
15 take jurisdiction or --

16           MR. POOCHIGIAN: I believe jurisdiction is one of the  
17 critical issues in the case.

18           SENATOR PETRIS: I'll withdraw the question, then. I  
19 wasn't aware of that.

20           We had another case similar to the rental case involving  
21 -- I don't suppose that would come before you; yes, it would --  
22 involving the purchase of a condominium where again the Supreme  
23 Court ruled: You cannot arbitrarily discriminate against a  
24 family just because it has children in the purchase of a  
25 condominium and thereby violate your own standards of applying  
26 the same rules to everyone.

27           Do you have any trouble with that?  
28



1 MR. POOCHIGIAN: No, I don't.

2 SENATOR PETRIS: That's the O'Connor vs. Green, I think  
3 it is.

4 Well, I think you've answered questions that were raised  
5 by the opposition. I guess I would go back to the attorney  
6 comments.

7 Frankly, I think it's unfair for the Governor, who had  
8 the opportunity to use a young person of tremendous talent, in  
9 this particular spot. Because I really think you're honestly  
10 trying to do what you're supposed to do on that Commission.

11 I had the same problem with a prior appointment. I want  
12 to explain where I'm coming from.

13 The current head of the consumer agencies in our state,  
14 number one guardian of the consumers' interests in California,  
15 whose prior career as President of the Chamber of Commerce and a  
16 member for years, and a business person, was dedicated to  
17 opposing all of these regulations. Public speeches saying: We  
18 don't need them. In fact, the policy instituted after the  
19 appointment was to have a series of workshops to preach voluntary  
20 compliance as opposed to mandatory by statute.

21 So the Governor, I think, was putting a square peg in a  
22 round hole. It's unfair to ask a person whose philosophical mind  
23 set is of a certain kind, to get on the other side of the table  
24 all of a sudden, you know. One decade you're arguing and  
25 advocating against even the basic notion of the statute, and the  
26 next decade you're asked to be the enforcer of that statute. It  
27 doesn't make sense.  
28



1 I'm wondering to what extent the criticism about your  
2 involvement in the landlords' side of things kind of puts you in  
3 the same way.

4 It's been said that you've made statements that there  
5 shouldn't be this many regulations involving landlords; they  
6 should have more freedom; that the State ought to get off the  
7 landlords' backs.

8 Is there any truth to that?

9 MR. POOCHIGIAN: I don't believe that I have said that.  
10 I don't recall --

11 SENATOR PETRIS: That's the only thing I've heard;  
12 whereas in the prior case, there were written statements, and  
13 publications and things, where there wasn't any doubt about what  
14 the prior person's philosophy was.

15 You don't put yourself in that category?

16 MR. POOCHIGIAN: No, I don't. And certainly, the  
17 comment that landlords ought to do whatever they want --

18 SENATOR PETRIS: That's not what I said. They ought to  
19 have a lot more freedom without so many regulations.

20 MR. POOCHIGIAN: Well --

21 SENATOR PETRIS: A lot of people have said that who are  
22 quite respectable.

23 MR. POOCHIGIAN: Sure.

24 SENATOR PETRIS: I disagree with them, of course.

25 MR. POOCHIGIAN: A lot of people say "There ought to be  
26 a law," and "Gee, they're letting these murderers go free," and  
27 all that. But when you get down to cases, we each have to follow  
28





1 our conscience and the law as we understand it, and I don't feel  
2 there's -- I just don't believe, of course it's for others to  
3 judge, but I certainly don't believe that anything I've ever said  
4 or anything I've ever done in connection with my work on the  
5 Commission would suggest a bias in favor of landlords.

6 If I may say one thing, Senator, on the question of the  
7 tie going to the runner.

8 In a sense that's absolutely true, and I agree with you.

9 SENATOR PETRIS: That's what liberal construction means.

10 MR. POOCHIGIAN: It is, with respect to construction.

11 However, it's very clear also, and I'm advised by  
12 counsel, that the standard for, for example, awarding damages --  
13 well, the liability standard as well, is the regular  
14 preponderance of evidence test. That's my understanding, that  
15 you got to have at least 50 percent or you don't win.

16 SENATOR PETRIS: Well, I think that's where the liberal  
17 or strict construction plays a role. All things being equal in a  
18 50-50 case, how do you interpret the statute? Do you interpret  
19 it in favor of the class intended to be protected. You know, if  
20 it's a labor case, and it's a very close question, could go  
21 either way, you're in a grey area, the purpose of that statutory  
22 declaration is to put the agency out of the grey area and come  
23 down on the side of the person or group of persons' favor.

24 MR. POOCHIGIAN: I agree with you.

25 SENATOR PETRIS: I had one final question which slipped  
26 my mind for a moment, to the relief of everybody here, I'm sure.





(Laughter.)

SENATOR PETRIS: I have it now.

How would you react to a proposal which has been discussed and constantly comes up in our Judiciary Committee with respect to this statute. There's a difference of opinion on both sides relating to how far we're going to go with this statute in adding protected classes. Now we have AIDS; tomorrow it'll be something else.

What about the notion of simply eliminating that section and not enumerating the protected classes at all, and simply saying: Our policy is to prohibit arbitrary discrimination against anybody. We don't have to identify them as a member of a particular organization, or an ethnic group, or a racial or religious group.

What if we just said across the board, without cluttering it up with these details and itemization: We all know what discrimination is, and we all know what a terrible impact it has, so we're just not going to allow it. If you're going to be arbitrary against someone -- I used an example the other day in asking someone about a job-connected thing, a person is not promoted, or is demoted, or maybe not hired because some third person, who is close to the management has a feud going. You know, I apply for a job, and you and I got into a big, big beef in court, maybe. And you are very, very close -- maybe your mother-in-law owns a building, and she won't rent to me because she'd rather have peace with you than with me. She doesn't even know me. And you get after her, and you tell her: You rent to that guy, I'm not going to talk to you again.



1           So, she discriminates against me. That's arbitrary.  
2 Now, maybe keeping peace in the family isn't quite so arbitrary,  
3 but the reason for it is.

4           And you can think of many other examples of individual  
5 cases that don't fit into these statutory categories but are just  
6 as devastating on the individual.

7           Would it be better to go that way and say: Okay, look.  
8 We're just going to say we don't want to have anybody  
9 discriminating in an arbitrary fashion against any individual,  
10 and not worry about the categories.

11           I'm not advocating that; I'm just throwing it out. It  
12 comes up frequently.

13           MR. POOCHIGIAN: I haven't personally given that idea  
14 much thought. As you were speaking, I was of course thinking  
15 about it.

16           It sounds on its face good. It would be nice to be able  
17 not to have to enumerate the classes.

18           On the other hand, I see problems. Having served in the  
19 role of a Commissioner these past nine or ten months, we're  
20 always looking for something to grab on to. The more we have to  
21 grab on to, the easier it is for us to do our job, so that we are  
22 not arbitrary in applying the law.

23           So I see there a balancing, too, and I don't know how I  
24 would come out on that.

25           SENATOR PETRIS: It's okay.

26           Thank you.

27           Thank you, Mr. Chairman.  
28



1 CHAIRMAN ROBERTI: Any further questions of Mr.  
2 Poochigian?

3 There is a motion before us. Secretary will call the  
4 roll.

5 SECRETARY WEBB: Senator Doolittle.

6 SENATOR DOOLITTLE: Aye.

7 SECRETARY WEBB: Senator Mello. Senator Petris.  
8 Senator Craven.

9 SENATOR CRAVEN: Aye.

10 SECRETARY WEBB: Senator Roberti.

11 CHAIRMAN ROBERTI: Right now there are two votes for Mr.  
12 Poochigian. Senator Mello has indicated he wants to vote on this  
13 matter. We'll hold the roll open.

14 You can just wait for the outcome of the roll call.

15 (Thereupon legislative matters were  
16 discussed and considered.)

17 CHAIRMAN ROBERTI: Senator Craven moves a call on Mr.  
18 Poochigian's confirmation be lifted.

19 Secretary will call the roll.

20 SECRETARY WEBB: Senator Mello.

21 SENATOR MELLO: Aye.

22 CHAIRMAN ROBERTI: The vote is three to nothing;  
23 confirmation is recommended to the Floor.

24 Congratulations.

25 MR. POOCHIGIAN: Thank you very much.

26 (Thereupon this portion of the  
27 Senate Rules Committee hearing  
28 was terminated at approximately  
4:50 P.M.)





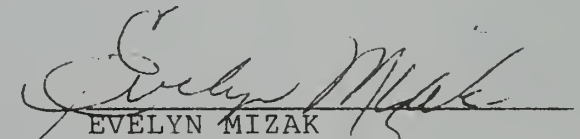
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RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

SENATOR WILLIAM CAMPBELL

WILLIAM FRENCH SMITH, Member  
Board of Regents  
University of California

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We're very happy to have with us the former Attorney General of the United States, Mr. William French Smith, as Appointee as a Member of the Regents of the University of California.

Pursuant to the Constitution, Mr. Smith appears before the Rules Committee, and you're sponsored, among others, by one of our colleagues who we're glad to have join you, Senator Campbell.

Mr. Smith, we'll ask you a question which may seem redundant, but we ask it of everyone: Why you feel you're qualified to assume this position?

SENATOR CAMPBELL: Before he answers that, Mr. Chairman and Members, may I just say that I think Mr. Smith has a distinguished career in public service in this country. Not only an outstanding private attorney, but the former Attorney General of the United States, where he distinguished himself, and a former Member of the Board of Regents of the University of California, again where I believe he showed outstanding leadership.

I'm pleased to be here along with many, many others who know Bill Smith to give him my highest and their high recommendation once again to be reappointed to the Regents of the University. I think he'll do an outstanding job there.

MR. SMITH: Thank you very much, Bill, for those kind words.





1 I suppose probably I'm the last person to effectively  
2 answer that question, but I can say that I graduated from the  
3 University of California. And I look upon it as being perhaps  
4 the foremost educational institution in the country, indeed, the  
5 world.

6 I have been on the Board now for a good many years, and  
7 I think that one thing that's most impressive about that kind of  
8 service is that regardless of what your attitudes are, or even  
9 your talents or background when you first go on a Board like  
10 that, after you have been there for a certain length of time your  
11 University of California hat really grows. And I have noticed  
12 this with any number of different Regents that service on behalf  
13 of an institution of that caliber, one that provides the public  
14 service that it provides, is such that its interests come first.  
15 And it doesn't take too long, regardless of what the motives or  
16 intentions are of those who first join it, the fact is that their  
17 outstanding and consuming interest is doing what is best for the  
18 University of California, which in turn is what is best for the  
19 people of the State of California.

20 CHAIRMAN ROBERTI: Thank you very much.

21 Are there any questions of Mr. Smith? Is there any  
22 opposition in the audience?

23 SENATOR CRAVEN: Move the confirmation to the Floor.

24 CHAIRMAN ROBERTI: Senator Craven moves the confirmation  
25 of William French Smith, Member of the Board of Regents of the  
26 University of California, be recommended to the Floor.

27 Secretary will call the roll.  
28



1 SECRETARY WEBB: Senator Doolittle.

2 SENATOR DOOLITTLE: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Senator Craven.

8 SENATOR CRAVEN: Aye.

9 SECRETARY WEBB: Senator Roberti.

10 CHAIRMAN ROBERTI: Aye.

11 Vote's five to nothing; confirmation is recommended to  
12 the Floor.

13 Congratulations. We look forward to working with you.

14 MR. SMITH: Thank you very much indeed, and the Members  
15 of the Committee.

16 (Thereupon this portion of  
17 the Senate Rules Committee  
18 Hearing was terminated at  
19 approximately 1:55 P.M.)

20 --oo0oo--  
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ALSO PRESENT

ROSEMARY FERRARO, Member  
California Horse Racing Board

RAYMOND SEELEY, Member,  
California Horse Racing Board





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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: In deference to the Governor's Appointees who have endured the meeting, and because I acknowledged your presence, Ray Seeley, but didn't mention the fact that Rosemary Ferraro had also endured the day, she gets to come up first.

Ms. Ferraro, we'll ask you what we ask all the Governor's Appointees, and that is: Why you feel you're qualified to assume this position?

MS. FERRARO: Well to start with, 30 years ago I helped my husband start our vending business; it's been very successful. I worked with him for several years, and in my ninth year, serving on the Board of Directors of a very fine hospital. I've served on one of the best managed boards of Y.M.C.A. in California and on the Boys' Club in Rio Honda, mostly Hispanics, and we do a lot of work there in Bell Garden.

I also have owned and bred and raised race horses for over 17 years. I've recently divested my last horse. I don't own any at this time. I know the back stretch real well, and I'm sensitive to the needs of the workers and grooms. I know their problems as well as I know the problems of the front stretch, too, the Racing Association.

Are there any other questions?

CHAIRMAN ROBERTI: Are there any questions of Ms. Ferraro?



1           SENATOR CRAVEN: I would move Ms. Ferraro's confirmation  
2 to the Floor.

3           CHAIRMAN ROBERTI: Senator Craven moves Rosemary  
4 Ferraro's confirmation to the Floor do pass, as a Member of the  
5 California Horse Racing Board.

6           Is there any opposition in the audience?

7           Seeing no opposition, Senator Craven's motion is before  
8 us.

9           Secretary will call the roll.

10          SECRETARY WEBB: Senator Doolittle.

11          SENATOR DOOLITTLE: Aye.

12          SECRETARY WEBB: Senator Mello.

13          SENATOR MELLO: Aye.

14          SECRETARY WEBB: Senator Petris.

15          SENATOR PETRIS: Aye.

16          SECRETARY WEBB: Senator Craven.

17          SENATOR CRAVEN: Aye.

18          SECRETARY WEBB: Senator Roberti.

19          CHAIRMAN ROBERTI: Aye.

20          The vote is five to nothing; confirmation is recommended  
21 to the Floor.

22          MS. FERRARO: Well thank you very much. I appreciate  
23 it.

24          CHAIRMAN ROBERTI: I promised your brother-in-law, the  
25 Councilman, that I would expedite your business.

26          MS. FERRARO: Thank you very much, Senator.  
27  
28



CHAIRMAN ROBERTI: Ray Seeley, Member of the California Horse Racing Board, also our former colleague.

We'll ask you the same question: Why do you feel that you're qualified to maintain this position?

MR. SEELEY: Well, I know I'm qualified, but I just want to know if you'd like to substitute the vote.

(Laughter.)

CHAIRMAN ROBERTI: I have to check and see how many times you voted with me.

MR. SEELEY: No, I've served for four years and was appointed by Jerry Brown at the request of this body, and I was confirmed at that time.

I haven't changed much since then, except I'm a little older, but I'm still able to fight for what's right on the Racing Board. Right now you can rest assured that I'll keep on doing that.

CHAIRMAN ROBERTI: Any further questions of Assemblyman Seeley?

SENATOR CRAVEN: Move Mr. Seeley's confirmation.

CHAIRMAN ROBERTI: Senator Craven has moved Raymond Seeley's confirmation be recommended to the Floor as a Member of the California Horse Racing Board.

Is there any opposition in the audience?

Seeing none, the Secretary will call the roll.

SECRETARY WEBB: Senator Doolittle.

SENATOR DOOLITTLE: Aye.

SECRETARY WEBB: Senator Mello.





1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 The vote is five to nothing; confirmation is recommended  
9 to the Floor.

10 Congratulations Ray; congratulations Rosemary.

11 (Thereupon this portion of the  
12 Senate Rules Committee hearing  
13 was terminated at approximately  
14 7:20 P.M.)

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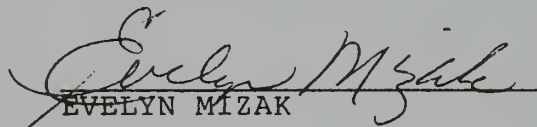
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

27<sup>th</sup> day of August, 1986.

  
EVELYN MIZAK  
Shorthand Reporter









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STATE OF CALIFORNIA

GOVERNOR'S APPOINTEES

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MEMBERS PRESENT

David Roberti, Chairman

William Craven

Nicolas C. Petris

John Doolittle

Henry J. Mello

MEMBERS ABSENT

None

STAFF PRESENT

Cliff Berg, Executive Officer

Rick Rollens, Consultant

Nancy Michel, Appointments Consultant

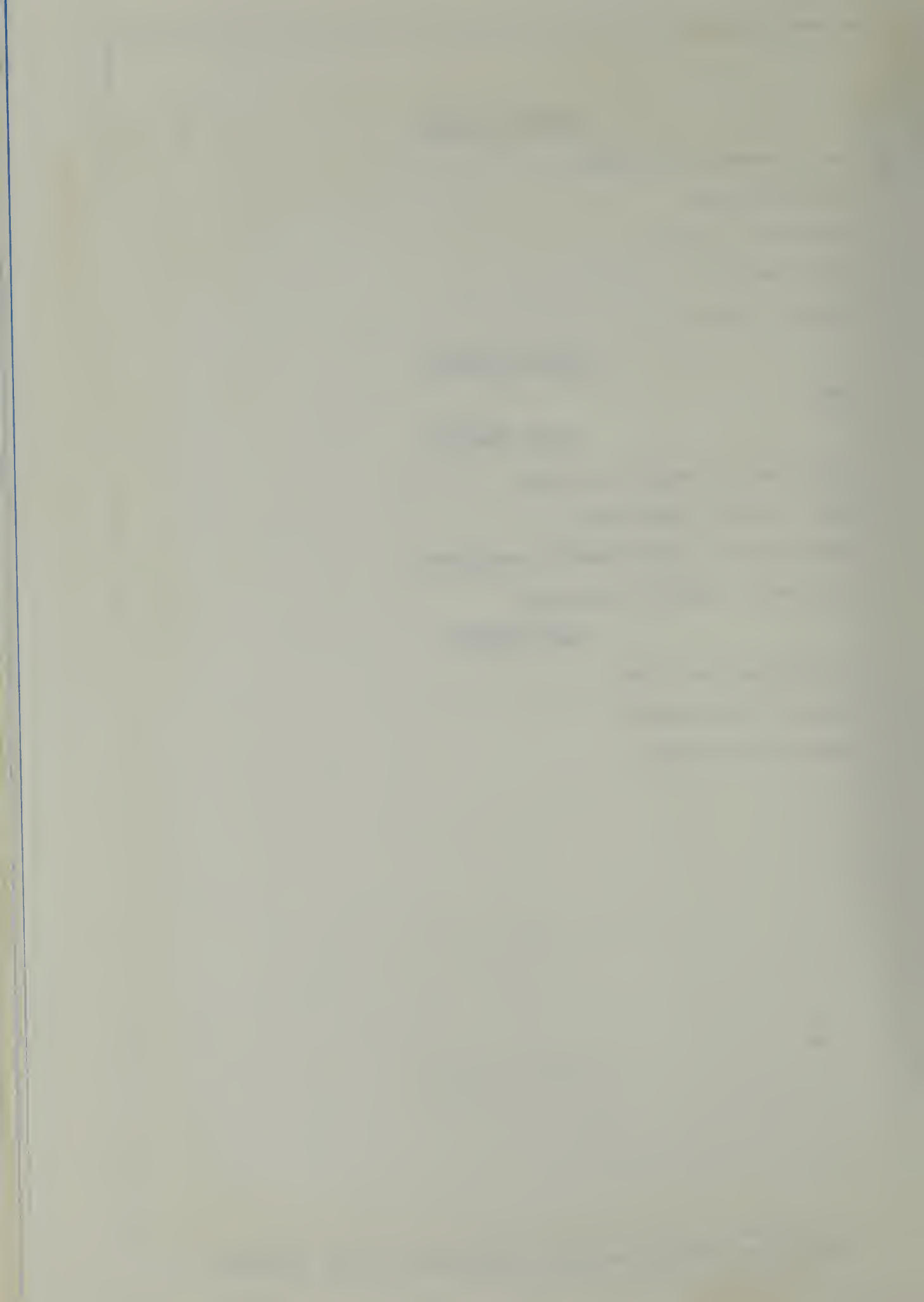
Pat Webb, Committee Secretary

ALSO PRESENT

Assemblyman Art Agnos

Senator Diane Watson

Senator Bill Greene



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--oOo--

CHAIRMAN ROBERTI: Next is the Governor's appointees appearing today, Mr. Gregory Gonot, Member, Agricultural Labor Relations Board.

Mr. Gonot, we'll ask you what we ask all the Governor's appointees, say why you're qualified to assume this position, I guess retain at this point is the preferable word.

MR. GONOT: Thank you, Mr. Chairman. If it please the Committee, I'd like to begin by making a few opening remarks which I think will answer the questions you posed, Senator.

For the record, my name is Gregory Gonot. Mr. Chairman, members of the Committee, ten years ago the Agricultural Labor Relations Board was less than a year old and was just emerging from its first significant crisis. The Legislature had denied the ALRB the additional funding it needed during its first fiscal year because of doubts about the agency's ability to administer the ALRA in a fair and impartial planner.

However, with a reconstituted Board and a new general counsel, the agency regained its funding and resumed operations in July of 1976. It was shortly thereafter in August of 1976 that I joined the ALRB as a staff counsel for the Board. I've been with the Board ever since.

During these past ten years, I've seen the ALRB go through some agonizing growing pains and survive a number of

1 significant crises. However, I am troubled by the fact that  
2 after all this time, the ALRB still retains a controversial  
3 image and must contend with major distractions from its  
4 quasi-judicial role. While it would be naive to expect that  
5 the Board could enjoy a high level of confidence from both  
6 labor and management at any given time, it is possible,  
7 however, for a Board that is balanced and knowledgeable to  
8 command the respect of the public at large and be effective  
9 in achieving the legislative mandate set forth in the ALRA.

10 I believe that my background is such that I can make  
11 a significant contribution to both the balance and expertise  
12 of the Board. As indicated on the resume I submitted to the  
13 Committee, I am a member of the California State Bar, and  
14 have been since 1972 when I obtained my law degree from the  
15 University of California at Berkeley. I have been emersed in  
16 labor law for the last ten years and during my tenure as a  
17 staff attorney at the Board I was an active participant in  
18 some 360 representation and unfair labor practice cases. At  
19 the time of my appointment I was serving in the highest staff  
20 counsel rank in state service, a position I had attained by  
21 1982.

22 It is my belief that in addition to enhancing the  
23 Board's collective expertise, my appointment also contributes  
24 to the balanced approach that is so essential for a  
25 quasi-judicial body like the ALRB. First of all, most of my  
26 labor law experience was developed while working for a Board  
27 member whose professional background was that of a neutral  
28 mediator. Second, throughout my professional career, I have

1 never been a representative for either management or labor in  
2 any private sector labor relations matter. Thus, it cannot  
3 be said that I am apt to view labor relations matters through  
4 tinted lenses.

5 Third, although my paid professional experience as  
6 it relates to labor management relations has always been in a  
7 neutral or judicial setting, my primary extracurricular  
8 involvement, that being leadership of the Association of  
9 California State Attorneys and Administrative Law Judges, has  
10 provided me with some valuable real world insight into the  
11 problems faced by both labor unions and management. As a  
12 result of that experience, I believe that I have a heightened  
13 sensitivity to the needs and concerns of all parties that  
14 come before the ALRB.

15 In serving as a staff counsel and now as a Board  
16 member, I have pursued what I believe to be an even-handed  
17 approach that is soundly based in applicable precedent from  
18 the National Labor Relations Act. Where the unique  
19 provisions of the ALRA are at issue, my aim is to construe  
20 them in accordance with the most probable intent of the  
21 California State Legislature. While operating within a  
22 framework of judicial restraint, I have no hesitancy in using  
23 any appropriate remedy that is at the Board's disposal.

24 Having briefly discussed my background and my  
25 judicial philosophy, I would like to conclude these remarks  
26 by expressing some of my hopes and goals for the Agricultural  
27 Labor Relations Board. Underlying my service on the Board is  
28 a commitment to enhance the effectiveness of the ALRA. A



1 major step toward that goal is being taken as the current  
2 Board seeks to demonstrate to the parties and to the public  
3 that the ALRB is a highly professional agency that can be  
4 relied upon to administer the act in a fair and impartial  
5 manner. It is my hope that this effort will promote  
6 compliance with Board orders and encourage the unions to  
7 rededicate themselves to using the processes of the Act.

8 Finally, if confirmed to my position on the ALRB, I  
9 will continue to do all that I can to help foster an  
10 environment that is conducive to collective bargaining and to  
11 the amicable settlement of farm labor disputes.

12 Thank you for your attention. I welcome the  
13 opportunity to answer any questions you may have.

14 CHAIRMAN ROBERTI: Any questions of Mr. Gonot?

15 Is there any opposition in the audience?

16 SENATOR CRAVEN: Move Mr. Gonot.

17 CHAIRMAN ROBERTI: Senator Craven moves Mr. Gonot's  
18 appointment be recommended do pass.

19 SENATOR PETRIS: Question.

20 CHAIRMAN ROBERTI: Senator Petris.

21 SENATOR PETRIS: I'm interested in a couple of  
22 areas. Overall, I gather you feel that the statute has been  
23 properly administered and is working well in the last year  
24 you've been on the Board?

25 MR. GONOT: Yes, that's my firm belief.

26 SENATOR PETRIS: I notice there's rather a high rate  
27 of dismissal of unfair labor practice cases reported, about  
28 75 percent. Those are done by the general counsel. So you

1 don't have any say in that, do you?

2 MR. GONOT: No, I don't Senator. The general  
3 counsel is the prosecuting branch of the agency and by  
4 statute he has the sole authority to determine which charges  
5 go to complaint.

6 SENATOR PETRIS: Does the statute have any  
7 guidelines or does the Board promulgate any guidelines as to  
8 what should be the basis to guide their counsel or is that  
9 entirely on his own interpretation?

10 MR. GONOT: As to which charges go to dismissal?

11 SENATOR PETRIS: Yes.

12 MR. GONOT: No, only insofar as they might result in  
13 a formal settlement and that has to be passed upon by the  
14 Board. Then we determine whether a settlement that is  
15 proposed furthers the purposes and policies of the Act. So  
16 we do have that review function, but it's only after  
17 something has gone to complaint and we have been presented  
18 with a formal settlement.

19 SENATOR PETRIS: Is that in all kinds of cases the  
20 settlement process --

21 MR. GONOT: All kinds of unfair labor practice  
22 cases, yes.

23 SENATOR PETRIS: In other areas doesn't the counsel  
24 have authority to settle cases without going to the Board?

25 MR. GONOT: In other areas meaning?

26 SENATOR PETRIS: Other kinds of disputes other than  
27 unfair labor practice.

28 MR. GONOT: The only kinds of --

1 SENATOR PETRIS: Pay disputes, for example.

2 MR. GONOT: That would be handled probably by  
3 another branch of the government. Unless it is something  
4 that comes within the provisions that are set forth in our  
5 Act that describe what constitutes an unfair labor practice,  
6 then we have no jurisdiction over such things as pay  
7 disputes, unless perhaps the employer has not followed a  
8 contract that was entered into, something to that effect.

9 SENATOR PETRIS: Well, I'm trying to think of the  
10 phrase that applies to the series of cases that have come up  
11 in the last couple of years which have to do with -- I'm  
12 searching for the phrase. It has the word "work" in it. See  
13 if I can find it here in these notes. They have to do with  
14 the amount of pay to which the employee is entitled.

15 MR. GONOT: Back pay.

16 SENATOR PETRIS: Yeah, the back pay dispute. Now,  
17 as I remember the counsel has settled a large number of those  
18 at a fraction --

19 MR. GONOT: General counsel.

20 SENATOR PETRIS: -- of what the critics thought it  
21 was. Does the Board have anything to say about that?

22 MR. GONOT: Yes, if they're in the form of a formal  
23 settlement. In other words, if the complaint has gone to  
24 hearing, at that point we would have jurisdiction over  
25 whether the matter gets settled or how it gets settled, and  
26 if it otherwise comes to the Board in the form of a formal  
27 settlement. So occasionally we do have to pass on these.  
28 There's been very few so far this year that we've actually



1 had to pass upon.

2 SENATOR PETRIS: Now, to go back to the dismissals,  
3 the Board doesn't have to approve a dismissal? If somebody  
4 files an unfair labor charge and the Board, the counsel says  
5 no grounds for this and he dismisses it, he doesn't have to  
6 bring that before the Board?

7 MR. GONOT: That is correct.

8 SENATOR PETRIS: Nor is it reviewed by the Board in  
9 any way?

10 MR. GONOT: No.

11 SENATOR PETRIS: That's just a case that you don't  
12 have to worry about. If it's dismissed, that's the end of  
13 it, right?

14 MR. GONOT: Right. If it goes to complaint, then it  
15 definitely comes within our jurisdiction.

16 SENATOR PETRIS: It's the make whole provision that  
17 I was trying to --

18 MR. GONOT: Some cases involving a refusal to  
19 bargain by a particular party, or bad faith bargaining, might  
20 result in the Board imposing what is called the make whole  
21 remedy and that is a remedy designed to, as the name implies,  
22 make employees whole for losses they have suffered due to the  
23 defendant's refusal to bargain or if it's a failure to  
24 bargain in good faith. Sometimes those are part of  
25 settlements as well.

26 If it's a bilateral settlement of the matter, then  
27 that means that both the union and the employer have entered  
28 into an agreement determining what is an appropriate amount

1 in the way of make whole if that is what this case involves  
2 and the Board would pass upon that. Sometimes they come to  
3 us in the form of unilateral settlements and we have to pass  
4 on those, too.

5 SENATOR PETRIS: Are bad faith cases included? I  
6 thought it was limited to refusal to bargain rather than  
7 bargaining in bad faith?

8 MR. GONOT: No. The statute comprehends both  
9 types. It doesn't say so in direct terms. We follow  
10 National Labor Relations Board precedent on that anyway and  
11 both types are ruled upon by the NLRB.

12 The technical refusal to bargain type is the only  
13 way that a party who, let's say, has challenged the results  
14 of an election can get the matter into court. By refusing to  
15 bargain he or she can then take the matter to court and get a  
16 ruling on it. The bad faith type of bargaining is where  
17 bargaining has actually taken place, but one of the parties  
18 has failed to live up to its obligation to bargain in good  
19 faith through such means as service bargaining or failure to  
20 provide information, that sort of thing.

21 So the refusal to bargain type of case can result in  
22 a settlement and if it was a formal settlement and brought to  
23 the Board, then we would have to pass on it and make sure  
24 that in approving a settlement that the approval promoted the  
25 purposes and policies of the Act.

26 SENATOR PETRIS: Which is what?

27 MR. GONOT: The purposes and policies of the Act  
28 include a number of things that are set forth in the preamble

1 to the Act and they include such things as stability in labor  
2 relations, justice for the farm workers grievances, and just  
3 generally things that are in the best interests of management  
4 labor relations in agriculture.

5 SENATOR PETRIS: Have any of these make whole cases  
6 been decided since you've been on the Board?

7 MR. GONOT: Yes. I was a participant in one and I  
8 believe it's the only -- are you talking about settlements or  
9 are you talking about decisions of the Board?

10 SENATOR PETRIS: Well, let's take both.

11 MR. GONOT: I don't believe we've had any involving  
12 make whole presented to us as settlements, although there may  
13 have been one or two and I think I was not a participant in  
14 those because they involved a lengthy and complex procedural  
15 history to which I wasn't privy.

16 We have had a case where the make whole remedy was,  
17 I believe, asked for by the general counsel. I'm not sure.  
18 But in any event, we do have the power to grant make whole if  
19 we determine that the circumstances warrant it. And that one  
20 case I'm thinking of did involve a technical refusal to  
21 bargain or something close to that where the employer never  
22 really indicated that it was service bargaining but didn't  
23 quite live up to its obligations to move the process along in  
24 a timely fashion and so forth. It was akin to a technical  
25 refusal to bargain case and we did award make whole in that  
26 case, and I was a participant in that case.

27 SENATOR PETRIS: Did you support the award?

28 MR. GONOT: In that particular case, yes, and I

1 would support it any time that the circumstances made it  
2 appropriate in a particular case.

3 SENATOR PETRIS: That's the extent of your  
4 participation during the year on that issue?

5 MR. GONOT: That's correct at this time, yes.

6 SENATOR PETRIS: You see any problems arising out of  
7 Prop 63 enactment? You work pretty much through  
8 interpreters. You have a whole staff of people who have the  
9 capacity to interpret and they're hired for that purpose.

10 MR. GONOT: They're hired to help us with any kind  
11 of legislation or propositions or whatever that could be  
12 passed that could impinge upon our operations. The thing  
13 that we've been tussling with most recently though is the new  
14 Immigration Reform Bill. However, I anticipate that the  
15 Prop. 63 English only issue will come up sometime in some  
16 cases that we have. At this point though the Board has not  
17 met to determine what the ramifications are of that  
18 proposition. It will be most interesting to find out.

19 SENATOR PETRIS: Have you got any interpretations  
20 from counsel?

21 MR. GONOT: None. As I say, we've mainly devoted  
22 our efforts to the more immediate issue of the Immigration  
23 Reform Bill. But at such time as it does become an issue  
24 before the Board, what we would certainly do is invite input  
25 from all of the parties, all interested parties who could  
26 tell us what the scope of our authority is and how it might  
27 impinge on our operations, what should be done, et cetera.

28 SENATOR PETRIS: Suppose a third party comes in,



1 let's say the author of the measure and he says you've got  
2 all these people speaking foreign language around here,  
3 that's not permitted. What do you do then?

4 MR. GONOT: As I understand it, Senator, the  
5 initiative has some voids that will have to be filled in by  
6 litigation and I'm sure that we'll see a lot of that, but  
7 until such time as we are I guess enjoined from doing what we  
8 normally do, we would continue to do it.

9 SENATOR PETRIS: You're planning to go ahead as  
10 usual?

11 MR. GONOT: Yes, until someone says that we legally  
12 do not have the right to do so.

13 SENATOR PETRIS: I understand the workload has been  
14 reduced substantially over the past ten years, particularly  
15 the last three or four. Have you formed any opinion of your  
16 own as to the reason for that decline?

17 MR. GONOT: There are several factors I think that  
18 contribute to it.

19 SENATOR PETRIS: Can you share that with us?

20 MR. GONOT: Certainly. One of course is that the  
21 major union that is a party before our Board has been filing  
22 less complaints or less charges with the Board. That in and  
23 of itself has had a major impact.

24 SENATOR PETRIS: Do you know why? What is their  
25 stated reason why?

26 MR. GONOT: Well, I try and stay away from  
27 speculation and so forth. I guess I could tell you what I've  
28 seen in the newspapers, but I pretty much just focus on the

1 cases that come to us and don't try and concern myself with  
2 what the factors are out there that may make for less of a  
3 workload. I am concerned about it, certainly, but --

4 SENATOR PETRIS: You don't think that the drop is  
5 due to the fact that the mission has been accomplished and  
6 there's no more problems out there?

7 MR. GONOT: Oh, no, I wouldn't say that, Senator.

8 SENATOR PETRIS: How about your colleagues on the  
9 Board, any of them feel that way?

10 MR. GONOT: I don't think there's a one right now  
11 that feels that the mission has yet been accomplished and  
12 we're certainly trying and there's a lot of work yet to be  
13 done. I think another reason why there are fewer complaints  
14 or charges now that are coming in is that parties on both  
15 sides have a better idea now after this length of time what  
16 their responsibilities are under the Act.

17 SENATOR PETRIS: You think they're both more mature,  
18 is that what you're saying?

19 MR. GONOT: Yes. They certainly have a lot of  
20 experience under our Act. They each have their own concerns  
21 and strategies and so forth, but I really can't spend too much  
22 time thinking about that because I'm just trying to decide  
23 the cases as they come before me according to the provisions  
24 of the Act and NLRB precedent. I don't mean to say I'm  
25 sticking my head in the sand, but I think it's important to  
26 tend to the exact job that we're here for.

27 SENATOR PETRIS: What's the caseload right now? How  
28 many cases are pending?

1 MR. GONOT: We have about 31 cases pending I believe  
2 and we also have a number of compliance cases that we're  
3 working on.

4 As regards compliance, we I believe have 116 of  
5 those. We are now utilizing a system whereby we meet with  
6 the regional directors each month. There's three regional  
7 offices. They come up and tell us which, let's say four  
8 cases that they think they can close within the next month.  
9 That's the standard we're using right now, four or more  
10 cases. This process has been working well. It's only been  
11 in effect for a short time. But the regional directors are  
12 very conscientious about their responsibilities and are  
13 responding very well to this new system that we have for  
14 keeping track of compliance cases and pushing them along.

15 So at the rate of four a month per region, that  
16 would be 72 in a year. I'd say within two years we can have  
17 the compliance backlog taken care of and still leave room for  
18 incoming cases that are still up in the courts that will find  
19 their way into compliance. So I think we're making some good  
20 progress in that area.

21 SENATOR PETRIS: Thank you.

22 Thanks, Mr. Chairman.

23 CHAIRMAN ROBERTI: Any further questions? Do I hear  
24 a motion? Senator Craven moves.

25 Secretary will call the roll.

26 SECRETARY WEBB: Senator Doolittle.

27 SENATOR DOOLITTLE: Aye.

28 SECRETARY WEBB: Senator Mello.



1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Senator Roberti.

7 CHAIRMAN ROBERTI: Aye. The vote is five to

8 nothing. Confirmation is recommended to the floor.

9 Congradulations.

10 MR. GONOT: Thank you. Appreciate it.

11 CHAIRMAN ROBERTI: I think we have to take the  
12 appointment up tomorrow, don't we? Yes, you'll be taken up  
13 on the floor tomorrow.

14 The next appointment is Mr. Carl B. Williams, Chief  
15 Deputy Director of the Department of Social Services.

16 Senator Greene wanted to participate in the  
17 questions and Senator Watson wants to testify. Senator  
18 Watson you want to come on up forward and will the sergeant  
19 call Senator Bill Greene.

20 Mr. Williams, we'll ask you what we ask all the  
21 Governor's appointments and that is why you feel you're  
22 qualified to assume this position and I'm going to turn the  
23 Chair over momentarily to Senator Craven because the  
24 delegation from my district wants to see me across the hall  
25 and I will be back.

26 MR. WILLIAMS: Thank you, Senator. For the record  
27 my name is Carl Williams. I'm Acting Deputy Director of the  
28 Department of Social Services in the division known as

1       Employment and Community Services.

2               I have a brief prepared statement on my  
3       qualifications. I've been extremely fortunate to have had  
4       considerable experience with welfare policy and welfare  
5       programs related to employment for welfare recipients  
6       throughout the years. Beginning in 1971 I was involved with  
7       welfare reform in California as an assistant director of the  
8       department now known as the Department of Social Services. I  
9       was directly involved with the development of AFDC policy  
10      intended to improve various aspects of the program here in  
11      California.

12             Between March of 1973 and October of '75, I served  
13      as a Deputy U.S. Commissioner of Welfare under then Secretary  
14      Caspar Weinberger at the Department of Health, Education and  
15      Welfare. During that period I worked directly with several  
16      states to assist them in reforming their welfare programs. I  
17      was involved in the review and establishment of national  
18      policy concerning AFDC and related human services programs.

19             From late 1975 through 1984 I was a self-employed  
20      consultant and consulting assignments included working with  
21      local, state and federal agencies principally in the area of  
22      human service policies. In late 1980 I was asked to serve as  
23      deputy of the transition team for Health and Human Services  
24      by president-elect Reagan. Following that I was asked to  
25      serve as a consultant in the Office of Policy Development at  
26      the White House where I was principally involved in domestic  
27      policy related to welfare and human service programs and the  
28      Omnibus Reconciliation Act of 1981.

1           Following that I returned to private consulting work  
2 where I worked with then Governor Ed King of Massachusetts  
3 where, among other things, I assisted him in installing a  
4 work program for AFDC recipients. Among others, I worked  
5 with the office or rather the Food Nutrition Service of the  
6 U.S. Department of Agriculture, the Social Security  
7 Administration in revising current administrative policy on  
8 food stamps and supplemental security income programs.

9           In late 1984 the Director of the Department of  
10 Social Services asked me to serve as her special assistant.  
11 It was at that time that I became involved in what eventually  
12 became the Greater Avenue for Independence Program. As you  
13 are aware, I was directly involved on behalf of the  
14 administration in the negotiation of the GAIN legislation.

15           Since my appointment to Deputy Director, Employment  
16 and Community Services, I've been fully occupied in  
17 implementing the GAIN Program throughout the state. Among  
18 the products of our efforts have been a set of approved  
19 federal waivers for the program's operation, a complete set  
20 of regulations governing the program, county planning  
21 guidelines. We have developed a highly cooperative working  
22 relationship with other state agencies involved. We have a  
23 strong working relationship with county officials. We have  
24 an excellent working relationship with the GAIN Joint  
25 Oversight Committee and have put into place a comprehensive  
26 marketing program for the GAIN Program.

27           Thus far, we've approved nine counties. We have an  
28 additional eight that we are reviewing. Several of these

1 counties are expected to begin operations early next year.

2 In summary, my experience over the past 15 years  
3 with welfare and employment programs, my deep commitment to  
4 the success of the GAIN Program, my strong appreciation of  
5 the broad bipartisan support that brought GAIN about and my  
6 management experience qualify me, I believe, to seek your  
7 confirmation and my appointment.

8 Thank you.

9 SENATOR CRAVEN: Thank you very much, Mr. Williams.

10 Let me ask first is there anyone in the audience who  
11 wishes to testify in favor of this appointment?

12 Mr. Agnos.

13 ASSEMBLYMAN AGNOS: Mr. Chairman and members, I  
14 just wanted to come and break a ten year precedent for me at  
15 least and that is to put in a good word for a very hard  
16 working Republican bureaucrat who is up before you for  
17 confirmation today.

18 I've worked very closely with Mr. Williams in the  
19 development and creation of the legislation which is now  
20 becoming known throughout the country for the bipartisan  
21 skill and contribution that Democrats and Republicans made to  
22 the development of that new law. And one of the key people  
23 in the development of that legislation which members of both  
24 houses worked in and both parties was Mr. Williams.

25 After the bill was signed into law, Mr. Williams  
26 became the deputy of the Department of Social Services who  
27 was in charge of implementing this program. This Legislature  
28 also understood what a monumental task it would be to



1 implement this particular piece of legislation since it is  
2 short of a trailblazing piece of work and it created a Joint  
3 Oversight Committee on GAIN.

4 We have worked very closely with the Department in  
5 general and with Mr. Williams in particular, and throughout  
6 that process both in the development of the legislation and  
7 the implementation of the legislation since it was signed  
8 into law over a year ago, Mr. Williams has been in my  
9 judgment outstanding.

10 In the eyes of the counties and the bureaucrats as  
11 well as the people I have come in contact with as Chairman of  
12 the Joint Oversight Committee, in the field he has done an  
13 outstanding job in listening, in responding and in  
14 implementing this legislation and in keeping faith with what  
15 this Legislature intended when it passed the law in the first  
16 place.

17 So for those reasons, not the least of which are his  
18 character and integrity, I strongly recommend him to you for  
19 confirmation as the permanent director of this program in our  
20 state Department of Social Services.

21 I want to tell you quite candidly without him I  
22 think we lose the impetus that this program has seen in the  
23 State of California. No one on the other side knows it as  
24 well as he does.

25 We were handicapped from the outset when the  
26 Secretary of Health and Welfare who helped create this  
27 legislation, David Swoap left within a month after the bill  
28 was signed into law. As you know, as of this date there

1 still is no Secretary of Health and Welfare and so there has  
2 been no leadership from the top in this particular piece of  
3 legislation and its implementation. The only leadership has  
4 come from the Director of Social Services and her deputy who  
5 is before you today for confirmation, Mr. Williams. And it  
6 is my opinion that if he is not confirmed and if he is not  
7 allowed to continue the implementation that has occurred in  
8 such outstanding fashion as of today, I think the program  
9 will be severely handicapped and severely retarded and I  
10 think we will lose much of the impetus that has already been  
11 gained. And for those reasons I heartily and strongly and  
12 without reservation recommend him to you for confirmation.

13 SENATOR CRAVEN: Thank you very much, Assemblyman  
14 Agnos.

15 Is there anyone else who wishes to speak in favor of  
16 the appointee.

17 SENATOR GREENE: May I ask a question?

18 SENATOR CRAVEN: Let me, Bill, see if there's anyone  
19 who -- are there any persons in the audience who wish to  
20 speak in opposition? If not, we will go to our colleagues.  
21 Senator Watson was here --

22 SENATOR WATSON: I'll defer to Senator Greene.

23 SENATOR CRAVEN: She defers to Senator Greene.

24 Senator Greene.

25 SENATOR GREENE: Assemblyman, you speak so glowingly  
26 of his participation in the development of this legislation.  
27 This legislation was constructed by a cooperation between the  
28 members of the Assembly and Senate; is that correct?

1 ASSEMBLYMAN AGNOS: Yes, sir.

2 SENATOR GREENE: He participated in no meetings or  
3 no construction of anything that the Senate put in this  
4 legislation. So would you like to amend your comments to say  
5 that as far as you know or insofar as the construction which  
6 took place on the Assembly side because he participated in  
7 nothing on the Senate side in the construction of the  
8 Senate's contribution to this legislation.

9 ASSEMBLYMAN AGNOS: I beg your pardon, Senator, he  
10 did contribute and participate greatly with the Senate as  
11 well as with the Assembly.

12 SENATOR GREENE: With whom?

13 ASSEMBLYMAN AGNOS: Senator Roberti's office, for  
14 example. We worked very closely --

15 SENATOR GREENE: But what did they do?

16 ASSEMBLYMAN AGNOS: In working out the child care  
17 provisions of the latchkey, that was part and parcel of this  
18 program with Donne Brownsey and frankly with your staff as  
19 well. Alan Davenport played a very --

20 SENATOR GREENE: But my staff doesn't do any  
21 constructing except just amplifying on what I say is going to  
22 happen. He participated in no meetings with me, with Senator  
23 Garamendi, with Senator Nielsen and he participated in none  
24 of the meetings we had with you and/or with Secretary Swoap,  
25 did he?

26 ASSEMBLYMAN AGNOS: He participated in a number of  
27 meetings with me and Secretary Swoap that you were not  
28 present.



1           SENATOR GREENE: I said that Garamendi, Nielsen,  
2           Greene, Agnos and Swoap. Did he participate in any of those  
3           meetings to the best of your knowledge?

4           ASSEMBLYMAN AGNOS: To my knowledge, I will defer to  
5           your memory that he was not present or develop any  
6           legislation that you were part of in any of those meetings.

7           SENATOR GREENE: Right. That's my only point. We  
8           did make that sizeable contribution.

9           ASSEMBLYMAN AGNOS: Absolutely.

10          SENATOR GREENE: For your information, I didn't know  
11          who he was except by a voice on the phone. I thought his  
12          name was Williamson. I had never seen him or heard of him.  
13          Now, when he sits in with staff, well, you know, that's when  
14          they're carrying out directions which we have given them.

15          ASSEMBLYMAN AGNOS: Then I will alter the statement  
16          to say that he did not participate in the construction of  
17          anything that you were directly involved in in any meetings,  
18          however, he was with the Senate with you as an exception.

19          Any other questions of me, Mr. Chair?

20          SENATOR CRAVEN: Senator Watson.

21          SENATOR WATSON: These are not questions of  
22          Assemblyman Agnos. These are questions I would just like  
23          to --

24          SENATOR CRAVEN: Very well. You may be excused,  
25          Assemblyman Agnos.

26          SENATOR WATSON: I would hope that we could put the  
27          partison issue aside. I don't think that has any relevance  
28          in what we're doing here today.

1 I am here because I am concerned that the program  
2 works well. As you know, I was probably the only dissenting  
3 vote on the floor of the Senate and I voted because I didn't  
4 think the program was completed and I thought that there were  
5 some loopholes in the program. So my concern is that those  
6 two to three million recipients out there get fair treatment,  
7 get educated and get into jobs and become financially and  
8 economically independent.

9 Anyone who is in charge of implementing the program  
10 I feel ought to have an attitude that is the same as mine and  
11 the same as those people who supported what the Legislature  
12 put into the various provisions of the bill. I, too, did not  
13 meet with Mr. Williams. I had met with Swoap.

14 My involvement in this issue goes back about five  
15 years. My name doesn't get mentioned because I was opposing  
16 what was the final plan. But I am not a newcomer to the  
17 issue. I chair Health and Human Services and I have been  
18 very concerned. I am not a supporter of keeping people on  
19 welfare and having a welfare culture. I've been accused of  
20 that, but that is not where I place my support.

21 I was working with Secretary Swoap for years trying  
22 to come up with a compromise piece of legislation. It eluded  
23 us. I gave credit to Assemblyman Art Agnos for being able to  
24 negotiate with both sides. I just don't think that the  
25 program was fine tuned enough at the time it passed, but it  
26 is in place.

27 I have several concerns and I'm going to raise them  
28 and, Mr. Williams, I am not attacking you. I'd like to know

1 how you think on these issues and why certain things occurred  
2 and with the sense of trying to learn as much as I can about  
3 the program and your involvement in it, then I think that we  
4 can play a more constructive role.

5 Now, my first concern is about minorities in hiring  
6 because as we all know, a great deal of the recipients, in  
7 particular in the Los Angeles area, the largest county, a  
8 great deal of them are minority. And I want to be sure that  
9 we do not operate a program from the state level that is  
10 devoid of the people that we serve. Therefore, my questions  
11 go to that particular issue.

12 Now, I understand that there has been a vacancy or  
13 there is a vacancy in the top management position, one that  
14 reports directly to you, and this position -- if I am wrong,  
15 would you correct me -- this position was classified at the  
16 Staff Services Manager Level III. Now, I understand that you  
17 reclassified it as an exempt position and I understand that  
18 there was an Anglo manager who was promoted but not eligible  
19 as an SSM III. Can you clarify that for me?

20 MR. WILLIAMS: The position you're talking about was  
21 not changed to an exempt position. It was changed to a CEA I  
22 position which is still within the Civil Service and there  
23 was an open competition for that position and we have  
24 appointed somebody to it. That happens to be Bruce Wagstaff  
25 who has been with this program from the very beginning and  
26 had been managing the GAIN Bureau and competed for and  
27 successfully got the position. But it still is a Civil  
28 Service position.

1           SENATOR WATSON: And you say it was competed for.  
2 If that is correct, what attempts have you made in minority  
3 recruiting in terms of that position and others? Did you  
4 recruit outside of the Department?

5           MR. WILLIAMS: Yes, we did. We did ask for a  
6 statewide interest in the position and we received some 19  
7 applications for it. We selected the six top candidates.  
8 This was cleared with my director. We interviewed three of  
9 the six. Three withdrew for various reasons. We interviewed  
10 one white male and two black males for the position.

11          SENATOR WATSON: And Bruce Wagstaff happened to be  
12 there and he got the position?

13          MR. WILLIAMS: He was the best qualified candidate  
14 among the applicants.

15          SENATOR WATSON: Bruce I think is Anglo?

16          MR. WILLIAMS: Yes.

17          SENATOR WATSON: How many of the people that you  
18 interviewed were minorities?

19          MR. WILLIAMS: Two out of the three.

20          SENATOR WATSON: Two out of the three were  
21 minorities that came out in the top three?

22          MR. WILLIAMS: Yes. Had we interviewed all six that  
23 we had selected initially, we would have had four minorities.  
24 The six top candidates included one white male, two black  
25 males, one white female and two Hispanic females.

26          SENATOR WATSON: Did any of these people since they  
27 came out in the top three -- if I'm understanding, there were  
28 three top, two were minorities, and one was Anglo -- are any



1 of these people that you recruited eligible for any other  
2 positions?

3 MR. WILLIAMS: No, because the only other open  
4 position was at a comparable level to what they already had  
5 and they were applying for the promotion to CEA I. So the  
6 answer would be no. However, we have recruited for those  
7 middle management positions and we have done a focus  
8 recruitment for minorities through our EEO office and we are  
9 just concluding interviews I believe tomorrow afternoon. We  
10 have had a large number of minority candidates who have  
11 applied for this and who have been interviewed and we will be  
12 making a selection shortly.

13 SENATOR WATSON: If the Staff Services Manager III  
14 level was retained as a classification, would that have  
15 enabled some of the minorities to be placed?

16 MR. WILLIAMS: I don't think it would have made any  
17 difference.

18 SENATOR WATSON: Why did it have to be upgraded to  
19 a CEA I?

20 MR. WILLIAMS: It was our feeling that the job  
21 called for that level and warranted that level. The job is a  
22 very difficult one. Has to do with a great deal of policy  
23 development. It cuts across many departments. It requires  
24 dealing with the Legislature. We thought it was qualified  
25 for that and that's why we increased, it's a small modest  
26 increase in salary, however, it is a fairly significant  
27 increase in the responsibility levels.

28 SENATOR WATSON: Bruce Wagstaff, was he eligible as

1 a Staff Services Manager III?

2 MR. WILLIAMS: He is on the III, on the III list,  
3 promotional list.

4 SENATOR WATSON: He was already on the Staff  
5 Services Manager III level?

6 MR. WILLIAMS: He was on that.

7 SENATOR WATSON: I mean, was he reachable?

8 MR. WILLIAMS: That's the question I think you're  
9 asking is whether it's reachable. I don't know because I  
10 didn't go through that. But he's in a rank sufficiently --  
11 when he took the test, he was a Staff Manager I. He would be  
12 considered a junior manager at the time. That was several  
13 years ago. He was on the III list, but I think the lowest or  
14 one of the lower ranks. The test I understand is going to be  
15 regiven early next year. He was probably not reachable  
16 unless a lot of people on the list would have waived their  
17 positions.

18 SENATOR WATSON: He was not reachable until the  
19 position was reclassified as a CEA I?

20 MR. WILLIAMS: That's correct.

21 SENATOR WATSON: That troubles me a bit.

22 Now, I understand you recently interviewed  
23 candidates for a Staff Services Management II vacancy?

24 MR. WILLIAMS: For two of them actually.

25 SENATOR WATSON: Created by a promotion of a  
26 manager. Now, what recruitment efforts did you make to find  
27 qualified minorities and how were they interviewed and have  
28 you made a decision on who you're going to hire?

1 MR. WILLIAMS: There are two positions in question,  
2 Senator. One of them created by the promotion of Bruce  
3 Wagstaff to the CEA I level, another one that is available  
4 because of a rotation of a Manager II to another part of the  
5 Department. We have gone out and asked our equal opportunity  
6 folks to do a focus recruitment for us. We have so far  
7 interviewed, we have interviewed 16, 16 applicants of whom  
8 four are Hispanics, three are black, one is an Asian, one is  
9 disabled and seven are white. We expect to make decisions on  
10 these middle managers within a week or so. We are very  
11 interested and I can assure you we're very interested in  
12 having a minority in one or two or both of those jobs.

13 SENATOR WATSON: All right. I am glad to hear you  
14 say that because I was very concerned about your  
15 reclassification of that position and the fact that somebody  
16 who was already there was reached by your reclassification,  
17 reclassifying the position.

18 Getting to the substance of the GAIN Program, one of  
19 my major concerns all along has been the sanctioning  
20 provisions, and I understand that when you were involved in  
21 the program back in Massachusetts that there was a suit  
22 brought against the program because of the good cause  
23 provision in there. I understand that included in the  
24 reasons that, not included in the reasons for good cause was  
25 a death in the family, a break down in child care  
26 arrangements, a court-ordered appearance, or other reasons  
27 commonly found to be valid with this category of recipient.  
28 I am concerned about that because as we implement this plan,



1 I feel that the recipients are going to be more at risk  
2 unless we spell out the valid reasons for sanctioning. Can  
3 you respond?

4 MR. WILLIAMS: First off, Senator, I'm not familiar  
5 with that particular lawsuit. It may have occurred after I  
6 left or was handled by someone else. I am not familiar with  
7 the lawsuit. Could you -- maybe if I heard the name.

8 SENATOR WATSON: I will let you know exactly. Let's  
9 see. It was your program was sued in a U.S. District Court  
10 to force WT to consider as good cause for nonparticipation  
11 such problems as I just named, lack of child care, death in  
12 the family and so on. And the case was a civil action. It  
13 was John Rheault and Rebecca Rheault individually and on  
14 behalf of others versus Thomas Spirito in his capacity as  
15 Commissioner, Department of Public Welfare, State of  
16 Massachusetts.

17 MR. WILLIAMS: I'm afraid I can't remember the  
18 details of that if there were a lawsuit, but nonetheless your  
19 question is how do I feel about that sort of thing?

20 SENATOR WATSON: Yes.

21 MR. WILLIAMS: I could tell you in our current rules  
22 those kinds of provisions are being made so that individuals  
23 who have obligations to go to court, if there are deaths in  
24 the family -- as a matter of fact, it was on the basis of a  
25 recommendation that I made that the administration included  
26 in the good cause provisions one that dealt with a  
27 forgiveness, if you would, of up to ten percent of the  
28 required hours of participation in addition to any other

1 reason that a person had under good cause for not  
2 participating. You will find that in the policy both in the  
3 statute and in our regulations. So I have no problem with  
4 that.

5 SENATOR WATSON: Spelling out what good cause is --

6 MR. WILLIAMS: I have no problems.

7 SENATOR WATSON: -- and sharing it with us?

8 MR. WILLIAMS: Yes, I have no problem. I have  
9 absolutely no problem spelling that out, not only sharing it  
10 with you, but making sure we are informing the participants  
11 of what these good cause provisions are.

12 We have recently put out a manual which we believe  
13 is going to directly provide information to participants on  
14 what good cause provisions exist and I think you'll find that  
15 is reason in a way that encourages the participant if they  
16 have any questions whatsoever to ask the worker for  
17 explanations, if necessary. I think that lays it out fairly  
18 well. It may not satisfy everybody in the world, Senator,  
19 but we think we've done a reasonably good job on it.

20 SENATOR WATSON: That's this section, Section 7?

21 MR. WILLIAMS: I believe so. I don't have a copy.

22 SENATOR WATSON: Maybe you can just explain to me  
23 your attitude about good cause sanctions and how sanctions  
24 play a role in the GAIN Program.

25 MR. WILLIAMS: Well, Senator, my feeling is that the  
26 way the Legislature put this bill together, there seems to be  
27 two kinds of concepts here, one that deals with the kinds of  
28 services that we can provide to people to help them and also

1 the imposition of a certain amount of responsibility on the  
2 individual for their own life and future and career. I think  
3 within those service and obligational kinds of requirements  
4 that the legislation lays out a very reasonable, and we  
5 follow this with our regulation, a very reasonable approach  
6 to sanctioning. It's my view that through the informal  
7 processes that are included in the program as well as the  
8 formal processes including a review at the county level under  
9 a county designed grievance procedure, the hearing process  
10 and so on, that it is very unlikely, it is very unlikely that  
11 we will not reach resolution on most problems that arise  
12 without having to go to actual sanctions.

13 As you will recall, one of the things that we  
14 included in the legislation was before any financial  
15 sanctions would take place there would be three months of  
16 money management which, if you would, would be the final  
17 warning before any actual money would be lost in the  
18 household. I think it's a very fair, very reasonable and  
19 graduated approach to dealing with problems between  
20 participants and county workers.

21 I just do not see sanctions occurring. We know of  
22 no sanction thus far. We don't have a lot of experience. We  
23 started in June in Fresno and in Napa and several other  
24 counties. We have not yet seen a single sanction, a  
25 financial sanction take place.

26 So I don't think that the Legislature has been  
27 remiss in being sure that there are adequate protections for  
28 participants.

1           SENATOR WATSON: This program has been touted as  
2 being cost effective in saving the state money. And the way  
3 you save the state money is removing people from the welfare  
4 rolls. My concern about sanctions is how do we do that? Do  
5 we remove people because we have trained them well, we have  
6 educated them well and they can go off and compete and get a  
7 job or do we find fault and find reasons to sanction them?  
8 That's another way of removing people from the welfare rolls  
9 as well, too. That's what I was trying to get from you when  
10 I asked you about your philosophy on sanctions.

11           MR. WILLIAMS: No. Senator, I would hope to  
12 convince you that the only way we want to see people leaving  
13 the rolls is through good employment that gives them  
14 sufficient income to keep them from being dependent upon  
15 public assistance. I am not at all interested in gaining  
16 savings by finding technicalities and faults with people that  
17 would permit us to sanction them. I don't believe any of us  
18 believe that, and I think the evidence is that we've not  
19 sanctioned a single individual to my knowledge.

20           SENATOR WATSON: L.A. County hasn't come on line  
21 yet.

22           MR. WILLIAMS: But we're not going to permit this.  
23 The goal of this program --

24           SENATOR WATSON: That's what I want to hear from  
25 you.

26           MR. WILLIAMS: The goal of this program is to get  
27 people trained, educated and in jobs and most of those  
28 people, most of our savings that we've estimated are going to



1       come, Senator, not from people entirely leaving the welfare  
2       rolls because they're not going to find sufficient income in  
3       those early entry level jobs to compete with the relatively  
4       generous grants that are provided. They're going to remain  
5       on public assistance and they're going to have to be aided,  
6       supplemented with AFDC.

7               So it is not in any way our goal to merely make  
8       savings by finding people out of compliance with the  
9       requirements of the program.

10              SENATOR WATSON: I would hope that this program does  
11       not become a punitive one, but a positive and constructive  
12       one in helping people reach that economic independence that  
13       we've all talked so much about.

14              There are two major areas, there are really three  
15       major areas of concern and then I'll stop and let somebody  
16       else pick up. But one is the net loss of income -- you  
17       mentioned that -- and then remedial education. And I know  
18       Senator Bill Greene had some questions in this area. But if  
19       we send people through this elaborate training program only  
20       to get into jobs where they can't afford health care for  
21       their children, where they lose their food stamps and they  
22       can't pay their rent, what good is the program? Would they  
23       not be better back on welfare where they can get Medicare,  
24       where they can get food stamps, where they can get  
25       supplements to pay their rent?

26              MR. WILLIAMS: Senator, I think everyone would agree  
27       if you get a job that won't provide those things for you, the  
28       chances are that you won't be leaving public assistance and

1 if you do you won't be leaving for very long. To begin with,  
2 the net loss of income provision, as you know, applies during  
3 the period known as job search or job club. That is, if an  
4 individual is offered a job that would not provide him with  
5 the same level of income that they would receive were they to  
6 remain on aid, then they can turn that job down and have good  
7 cause for doing that. It's not expected that most of the  
8 people who do find jobs are going to be completely free of  
9 the welfare system. But even for those that do marginally  
10 get off of public assistance because of income, as you're  
11 aware, there is a so-called nonassistance food stamps  
12 available to low income households, the medical benefits are  
13 to be continued up to nine months after they're off public  
14 assistance. Child care will be paid in full for three months  
15 after they leave public assistance, and we have attempted to  
16 have all of the participants register for the alternative  
17 payment program through the Department of education so that  
18 they will have moved, hopefully, up to a level on that list  
19 where they will be able to get subsidized child care after  
20 they leave. It is not a perfect system, Senator, I agree  
21 with you.

22 SENATOR WATSON: I understand that.

23 MR. WILLIAMS: We've done everything we possibly  
24 could within reason to try to ease that transition period.  
25 Some people argue that there ought to be paid child care for  
26 longer than three months. Some people argue that there, no  
27 one ought to be required to take a job unless they get  
28 guaranteed medical benefits, no one ought to take a job



1 unless they have child care provided by the employer or at no  
2 charge to them and so on.

3 There are a lot of very desirable things that we  
4 simply weren't able to do because of the realities of the  
5 fiscal constraints on the state. So we've tried to make the  
6 best job of taking available resources, putting them together  
7 in a way that would focus them on this particular group of  
8 people and try to ease that transition period from dependency  
9 to independence through employment. It's not perfect, I  
10 agree, but I think we've reasonably approached that. We  
11 maybe have to do some fine tuning somewhere down the line.  
12 No doubt we will. But for the meantime, we'd like to see how  
13 this works and then find out what the problems are and when  
14 we have some reasonable information, then come back to the  
15 Legislature.

16 SENATOR WATSON: That's another one of my points. I  
17 think you and I disagree on this third point that I want to  
18 raise, and that is getting to the level of work that would  
19 allow somebody to become independent, I don't think the  
20 program goes far enough in researching jobs and job  
21 development.

22 I hear from you that there are enough jobs out  
23 there. We know there are a lot of jobs out there, but we're  
24 talking about competition. We're talking about people with  
25 college educations. We're talking about people who have  
26 never been on welfare also out there in the competitive  
27 field. We're talking about AFDC recipients leaving the  
28 welfare rolls and competing in that market. And we've

1 talking about people with children.

2 I feel that we probably can look down the track now  
3 rather than waiting for the experience and saying unless we  
4 have a job development component, we're going to run into  
5 this problem with the --

6 MR. WILLIAMS: I agree. I don't disagree with you  
7 at all.

8 SENATOR WATSON: I appreciate your agreeing with me  
9 on that.

10 MR. WILLIAMS: I don't disagree at all with you.

11 SENATOR WATSON: And with the workfare part of the  
12 program, we're putting people into community services, a  
13 public service job.

14 MR. WILLIAMS: Right.

15 SENATOR WATSON: In hopes that they'll go into those  
16 jobs and most of those pay the bare minimum that will not  
17 allow them to cover the premiums, for instance --

18 MR. WILLIAMS: I know what you mean.

19 SENATOR WATSON: -- for health care for their  
20 children. So unless there are jobs out there and certainly I  
21 think what the state can do is look at the various areas and  
22 the state plans and the areas that those plans are posed in  
23 and what the job conditions are in those areas and start  
24 looking at ways of developing jobs that will pay these people  
25 a salary that will allow them to pay the going rate for child  
26 care in their area, that will allow them to pay the going  
27 rate if they're in San Francisco for rent, that will allow  
28 them to buy their food on their own and not have to take food

1 stamps and then will allow them some possibility of potential  
2 for moving up so that their salaries will increase as the  
3 price of living increases so these people won't have to come  
4 back on the rolls again. That's what I think the program  
5 lacks.

6 MR. WILLIAMS: Senator, I agree with you that  
7 economic development is crucial to the success of this  
8 program. What I probably disagree with you on is I don't  
9 think the GAIN Program is the vehicle in which the economic  
10 development burden should lie.

11 SENATOR WATSON: Mr. Williams, we are talking --  
12 let's not talk about economic development, let's talk about  
13 jobs.

14 MR. WILLIAMS: Okay.

15 SENATOR WATSON: We are talking about none other  
16 than a program that trains a recipient to go to work.

17 MR. WILLIAMS: We need jobs for that.

18 SENATOR WATSON: That's what I'm talking about. I'm  
19 not taking about reforming economic development, I'm talking  
20 about what these people when they get out there and compete  
21 if we've had them in prep, you know. That's where we differ.  
22 I think that ought to be eliminated out of the program and we  
23 ought to put them through this complex system of training,  
24 education with all the options, and then see that there's  
25 some jobs out there and decent paying jobs so that we don't  
26 have to see them again.

27 MR. WILLIAMS: I agree. I'm using economic  
28 development probably in the same way you're using job

1 development.

2 SENATOR WATSON: I don't think so.

3 MR. WILLIAMS: Let me explain to you what two little  
4 things we've done. We're working very closely with the  
5 Department of Commerce to try to link up their economic  
6 development, job development with GAIN.

7 SENATOR WATSON: I don't think they're synonymous,  
8 so let's say jobs.

9 MR. WILLIAMS: All right, let's say jobs. Let me  
10 give you an example of what just occurred in Fresno County.  
11 Fresno County has a twelve and a half percent unemployment  
12 rate. Thus far, the county has been able to find roughly a  
13 third to 40 percent of their participants jobs through the  
14 three week job club portion. That means that a good portion  
15 of those people aren't finding jobs and they're going on to  
16 assessment and training and so on. The question is are the  
17 jobs going to be there in the end? Will they be there when  
18 they finish their training? They ought to be there and one  
19 of the ways that Fresno County is trying for make sure they  
20 are is they recently, as an example, brought a firm in who  
21 got an industrial development bond approved to put in a  
22 plastic forming corporation company in Fresno County and  
23 they're going to hire 200 people. As a condition of the  
24 support from the county and as a condition of the support for  
25 the industrial development bond, they committed to hiring a  
26 minimum of 70 percent of the participants from GAIN graduates  
27 in their company. That's 140 jobs. One hundred and forty  
28 jobs is not a large number of jobs, but it is something.



1 It's almost half as much as they've already gotten in Fresno.

2 Tomorrow at 6:30 in the morning I'm flying to  
3 Houston at the expense of a private firm who wants to talk to  
4 me about locating a large operation in California and they  
5 want to understand how the GAIN Program works, what the tax  
6 advantages are, what some of the advantages are of the  
7 enterprise zones and understanding of our needs for child  
8 care at the job site. They seem positive and willing to  
9 consider that. They seem positive and willing to consider a  
10 committing to first source of hiring from GAIN, and those  
11 kinds of things. This will require some negotiations. But I  
12 am directly involved in trying to find jobs for GAIN  
13 graduates. It's a matter of having the resources and  
14 focusing resources in my view. For example, all of the  
15 industrial development bonds that are approved at the state  
16 level could very well require that, or at least indicate that  
17 they would be considered more favorably were they to include  
18 a first source of hiring for GAIN participants. That's the  
19 way to get job development in my view, to link up any  
20 economic development that is moving companies in and so on,  
21 make part of the price of doing this their commitment to  
22 hiring a GAIN participant.

23 SENATOR WATSON: That is exactly the component that  
24 I don't see in the overall GAIN plan. Now, you've got to go  
25 to Houston yourself tomorrow. That ought to be a required  
26 component of every county.

27 MR. WILLIAMS: The county is going with me.

28 SENATOR WATSON: I mean of every county. All 58

1 counties ought to be required to have that component in  
2 there.

3 MR. WILLIAMS: Senator, I agree, they all ought to  
4 be working on these things and I think, I think they're still  
5 learning a little bit at the county level. Fresno County has  
6 an advantage in that it's figured out that in order to  
7 develop jobs under conditions of high unemployment like they  
8 have, they've got to have all their economic development  
9 people work towards requiring that GAIN be part of any kind  
10 of job development scheme. Fresno is --

11 SENATOR WATSON: That's, you see --

12 MR. WILLIAMS: That's a small example, I realize  
13 that.

14 SENATOR WATSON: But what are we doing to see that  
15 the jobs are there? That's my question to you.

16 MR. WILLIAMS: Senator, I --

17 SENATOR WATSON: I think that's where we differ.

18 MR. WILLIAMS: No, I don't think we differ. I think  
19 the GAIN Program can't in and of itself carry that burden. I  
20 think what we have to do is possibly look at ways to focus  
21 this job development activity and require linkages to GAIN  
22 and I think we might have to do it legislatively.

23 SENATOR WATSON: Good, legislatively. I had the  
24 perfect plan, but nobody else thought it was perfect but me.  
25 My colleague has just come back in. Bill, I raised an issue  
26 about remedial education and I left it alone because I knew  
27 this was something you were interested in. So I'm going  
28 to --



1           SENATOR GREENE: As I indicated to the Chair, I did  
2 not wish to query Mr. Williams. I wish to make a  
3 presentation to the Committee and present facts and what have  
4 you. I'm not interested in sitting up here toying with him.  
5 I'm here to make direct accusations.

6           SENATOR CRAVEN: Very well. Have you finished,  
7 Senator Watson?

8           SENATOR WATSON: Yes. I wasn't going to go into  
9 that remedial education thing because I knew Bill was  
10 interested. Maybe that's in his presentation. I stop at  
11 this point.

12          SENATOR CRAVEN: Well, the Committee appreciates the  
13 very cogent questions which you've asked and, hopefully, the  
14 philosophic exposition which Mr. Williams has given led some  
15 degree of insight as far as you're concerned as to his  
16 qualifications and philosophy as relates to the job. Senator  
17 Mello, did you have questions?

18          SENATOR MELLO: Thank you, Mr. Chairman. Senator  
19 Greene and I had quite a conversation the other day. Now I  
20 see you more or less passive about -- let me ask you a  
21 question, if I may.

22          SENATOR GREENE: I'm not at all passive. I want to  
23 make a presentation to the Committee. I'm not interested in  
24 sitting up here toying with a man who I already know what  
25 he's going to say.

26          SENATOR MELLO: So you will be making a  
27 presentation?

28          SENATOR GREENE: Yes, but I'm not here to --

1           SENATOR MELLO: When two of my colleagues that I  
2       respect very much raise these kind of concerns, they will  
3       have an influence on me, but I will not ask you whether you  
4       would recommend we confirm him or not.

5           SENATOR GREENE: If you wish me to make my  
6       presentation now --

7           SENATOR MELLO: Mr. Chairman, if I could just ask a  
8       couple of brief questions.

9           SENATOR CRAVEN: Certainly. Please go ahead.

10          SENATOR MELLO: And that is the job development  
11       component to me is the most important part of this program to  
12       make it work and I think GAIN so far has just been a lot of  
13       hot puff and not too much action. I said this when the bill  
14       was going through. The only thing I disagree with Senator  
15       Watson is she said there's a lot of jobs out there and,  
16       number one, from my perspective, there's not a lot of jobs  
17       out there. We're going through a very sluggish economy.

18                 Number two, there never has been a lot of jobs out  
19       there for welfare recipients. I've been in business 38 years  
20       and somebody comes around and says I've been on welfare, how  
21       about giving me a job -- boy, I hate to say this publicly --  
22       but you just look very hard at their qualifications because  
23       if they haven't been earning and haven't held a job, what's  
24       the likelihood they're going to hold one with you? That's  
25       the first thing I think is missing and I just don't think  
26       GAIN will work long-term unless we have an outreach program.

27                 I've seen your chart, you know, how it cycles people  
28       through the job search, you go out and look for jobs.

1 Welfare recipients -- and I've been a county supervisor for  
2 eight years and been involved in this same thing on a local  
3 level -- welfare recipients aren't just going to be motivated  
4 to go job hunting. They want to get off welfare, I grant  
5 that, but they're not motivated unless they can reach some  
6 degree of success. And unless GAIN and us can put something  
7 together, go out and do the job development, go to employers  
8 like maybe what you're going to be doing in Houston tomorrow,  
9 but you have to go out and have that employer say, yeah, I'll  
10 hire. And then there has to be some incentive, like manpower  
11 development programs and so forth.

12 Now, I think until we do that, we're just going to  
13 be -- I've seen your, Linda sent me a nice brochure that I've  
14 been using for speeches around my district and I'm not making  
15 speeches for GAIN at this point because I think the jury is  
16 still out as far as its successes. But if you have an  
17 outreach program for jobs and jobs directed at welfare  
18 recipients, then I think it's going to have a chance to  
19 succeed and I want to hear your comments on that.

20 MR. WILLIAMS: Well, Senator, I think one of the  
21 reasons why business is not, as you reflect, terribly  
22 enthusiastic when an applicant for a job comes in who's been  
23 on public assistance is in part an attitude problem and in  
24 part the fact that most welfare recipients haven't had an  
25 opportunity to get the kind of training and education that  
26 they need to go out and compete favorably.

27 Whether a person is on welfare or not is really not  
28 the bottom line for a private employer but rather how well

1 qualified a person is, how motivated they are and how  
2 reliable they are when they come to the job site. We think  
3 that the GAIN Program is going to provide welfare recipients  
4 with the kinds of skills and abilities that they need to  
5 compete in the job market and to compete we believe favorably  
6 with people who are out on the street.

7 Some people suggest that we may be even giving them  
8 an advantage in the kinds of training and opportunities  
9 they'll have before they go out.

10 I know that the private sector also has seen these  
11 work programs come and go over the years. They've promised a  
12 lot. They've told the private sector that they'll provide  
13 good, well trained employees and so on. And for the most  
14 part, with some exceptions, but for the most part they have  
15 failed to produce what the private sector wants.

16 The GAIN Program is designed around the employer  
17 demand. It's not like the WIN Program. It's not like public  
18 service employment. It's designed around the demand of  
19 employers for trained employees. We've worked backwards from  
20 that demand. So that when we train somebody and send them  
21 out, we have a reasonable belief that they will be able to  
22 find employment and be every bit as qualified as any other  
23 applicant for that job.

24 SENATOR MELLO: When you say they will be able to  
25 find employment, I think somehow we're not putting the two  
26 together, the job with the person that's job hunting to  
27 really consummate a situation there.

28 Do you have any statistics that shows in the brief



1 period GAIN has been in existence, how many people have you  
2 placed in jobs that have resulted in long-term jobs compared  
3 to the number of persons that have been enrolled in the  
4 program?

5 MR. WILLIAMS: Senator, I really can't respond to  
6 that on a long-term basis. I can tell you what some of  
7 the --

8 SENATOR MELLO: Well, long-term could be six months  
9 for somebody in that capacity. What statistics do you have?

10 MR. WILLIAMS: I can only give you collective  
11 information that we have on Fresno County. For example, in  
12 Fresno County, there are about 3,400 active cases and there  
13 are about 700 or 800 of those referred to basic education,  
14 another 727 or so went to job club. Of that group, 2225  
15 found employment within a three week period.

16 Now, keeping in mind --

17 SENATOR MELLO: About 3,000?

18 MR. WILLIAMS: Yeah. The other 3,000, they're in  
19 various components, assessment, training, remediation and so  
20 on. But of the one's that went to look for jobs for three  
21 weeks, the 700, roughly 225 of them have found jobs. Against  
22 the background of 12 and a half percent unemployment, that's  
23 not a bad start. It's going to get better, I think.

24 SENATOR MELLO: How's it look in other counties?

25 MR. WILLIAMS: Well, that's the problem. We don't  
26 have statistics on other counties at this time. They've just  
27 started over the past several months. The first reports  
28 indicate just start-up kinds of things as opposed to any

1 statistics like this. Fresno is the longest running county.

2 SENATOR MELLO: They've been operating before the  
3 bill was passed, weren't they, on some sort of local plan?

4 MR. WILLIAMS: Right. They had not a GAIN Program,  
5 but they had experience with the Employment Preparation  
6 Program which when GAIN legislation was passed, they were  
7 able to convert very quickly. They had a lot of their ducks  
8 in order already and were able to move swiftly and that's why  
9 they happened to be the first county to begin.

10 SENATOR MELLO: I think the situation on minority  
11 hiring practice, because a lot of the clients are from  
12 minority backgrounds, and as our background material  
13 indicates here that your Director, Linda McMahon, had to come  
14 in and she used the words "step in" and undertake the  
15 recruitment of blacks and Hispanics after your being allowed  
16 to hand-pick the staff where you failed to hire any from  
17 those categories.

18 MR. WILLIAMS: That's not accurate. When we started  
19 the unit, a lot of the positions were transfers from existing  
20 personnel. Starting with our first recruitment, it is the  
21 department's policy to recruit very heavily Hispanic  
22 employees.

23 SENATOR MELLO: Let me read it. It might be a lot  
24 easier. It says, "At a legislative hearing in August your  
25 Department's Director, Linda McMahon, indicated that you had  
26 been allowed to hand-pick your staff from among departmental  
27 employees. She also said when she realized your hiring was  
28 unbalanced ethnically, she stepped in to focus recruitment on



1 blacks and Hispanics."

2 Question: "Why did your Director have to step in  
3 and direct your hiring to include Hispanics and blacks?"

4 MR. WILLIAMS: First off, that's not correct. It's  
5 not correct because the Department has had for some time  
6 before GAIN came along a policy of trying to reach parity in  
7 the hiring of employees. The Department had asked us in our  
8 new hires to focus on Hispanics because Hispanic hiring was  
9 at that time below parity. We did focus recruiting, however,  
10 because of other interests in minority hiring --

11 SENATOR MELLO: I get a little bit disturbed by  
12 using the words "focus recruiting" and interviews as you  
13 pointed out to Senator Watson, it's not going to mean a thing  
14 until there's a paycheck there. You have to hire somebody.

15 MR. WILLIAMS: Right.

16 SENATOR MELLO: My question is have you, you're  
17 indicating here Linda McMahon's statement is incorrect and  
18 that's, you know, that's your view on it. But how many  
19 blacks and Hispanics have you hired since taking office  
20 compared to how many other positions that were under your  
21 hiring supervision?

22 MR. WILLIAMS: I have that.

23 SENATOR MELLO: You're well prepared.

24 MR. WILLIAMS: Senator, to begin with, when we set  
25 up the GAIN Unit, all of the positions were transferred in  
26 from other -- there weren't new hires. So the core group of  
27 people that came in were mostly transfers. Now in the most  
28 recent, in the most recent recruitment for Staff Services

1 Analyst and Associate Government Program Analyst, we hired  
2 two black males, one Asian male, one black female, and one  
3 Hispanic female. Now --

4 SENATOR MELLO: Out of how many positions totally?

5 MR. WILLIAMS: This was -- let's see, five.

6 SENATOR MELLO: Five out of five?

7 MR. WILLIAMS: Four, there were four positions,  
8 limited term positions -- I'm sorry, five out of five.

9 SENATOR MELLO: That's batting a thousand there.

10 MR. WILLIAMS: Five out of five. There were five,  
11 four limited term positions and one existing vacancy.

12 SENATOR MELLO: I'm not really aware of what the  
13 scope is of your staff or your hiring. Five out of five  
14 would negate any argument that you're not hiring blacks and  
15 Hispanics.

16 MR. WILLIAMS: We are hiring blacks and Hispanics,  
17 that's correct, we are hiring them.

18 SENATOR MELLO: Out of the total, I guess, is what I  
19 want to find out. Out of the total hiring that you've done,  
20 how many have come from ethnic groups?

21 MR. WILLIAMS: Well, let me answer it this way. Let  
22 me count the people that I have that are minorities and then  
23 tell you how many people I have in total. Okay. We have one  
24 Asian male, three black males, two black females, three  
25 Hispanic females, and four Native Americans. That's 13, 13  
26 out of roughly, out of, I think it's 22.

27 SENATOR MELLO: How many of them are professional  
28 positions versus secretarial?

1 MR. WILLIAMS: An Associate Government Program  
2 Analyst, do you consider that professional?

3 SENATOR MELLO: Yeah. Secretaries and messengers.

4 MR. WILLIAMS: I have one Office Assistant who's  
5 black who would be in the secretarial or clerical field. The  
6 balance of the minorities are in an Associate or Staff  
7 Services Analyst positions.

8 Let me give you some -- this might help clarify  
9 this. The labor force, the labor force percentages for the  
10 various categories, Asian males, 1.9. In the Department of  
11 Social Services overall it's 2.7, and in the GAIN Bureau  
12 itself it's 5.6. For black males in the labor market it's  
13 3.4. In DSS it's 4.1. In my function it's 11.1.

14 SENATOR MELLO: Well, it should be higher because  
15 you're dealing, I mean if we're ever going to get people off  
16 welfare which everybody wants to happen, we're going to have  
17 to deal with people who know something about the situation  
18 and somehow try to transfer what they're doing into jobs in a  
19 paycheck. But I think, based on that it appears that you  
20 should go back -- I shouldn't say you should go back to Linda  
21 McMahon. She's another person in your department. But  
22 somebody not really giving us the right information. If she  
23 says she had to step in and do some recruiting on her own  
24 because you failed to do so --

25 MR. WILLIAMS: I think, Senator, there's just an  
26 honest misunderstanding. She has told us all, all of the  
27 deputies in our department, to recruit minorities. I mean,  
28 that is her direction. She is trying to bring the

1 representation up, and that wasn't said merely to me.

2 SENATOR MELLO: You have to do a lot more to  
3 recruit. I was involved earlier. I go back to my former  
4 career. But we did a lot of things. We actually did a  
5 minority placement program where you went out and brought  
6 people in to where there was a job opening that would be  
7 coming up in six months and put them into a position as an  
8 aide watching and then, but they still had to take the Civil  
9 Service test. But you have to make an effort and reach out  
10 and try to do it. Otherwise, if you just sit there and  
11 recruit and interview, I guarantee you can turn away every  
12 Hispanic, every black, every ethnic group you want. You can  
13 just say they're not qualified and hire somebody better.

14 MR. WILLIAMS: I don't think that's what our track  
15 record is.

16 SENATOR MELLO: Thank you, Mr. Chairman. The gavel  
17 has gone up. It's time for me to quit.

18 SENATOR CRAVEN: Thank you very much, Senator Mello.

19 Senator Greene, as you see, there are two members  
20 absent, one our chairman, and Senator Petris; however, if you  
21 would care to make your remarks at this time you're certainly  
22 welcome to do so.

23 SENATOR MELLO: Mr. Chairman, before you do that,  
24 may I suggest we call -- what Senator Greene may be saying to  
25 our Committee, I want my two colleagues to hear.

26 SENATOR GREENE: I have talked with them. I don't  
27 know if it's been in enough detail.

28 SENATOR MELLO: Could we ask the sergeant to call



1 and see if --

2 SENATOR GREENE: I did tell them that I would  
3 publicly make my accusations.

4 SENATOR CRAVEN: Let's take a five-minute recess and  
5 at that time perhaps we can get in touch with the two  
6 senators and get them back in time. Let's recess until  
7 quarter after 4:00, please.

8 (Thereupon a brief recess was taken.)

9 CHAIRMAN ROBERTI: The Committee will reconvene.  
10 Senator Greene is recognized.

11 SENATOR GREENE: Mr. Chairman and members, I've  
12 asked to appear before the Rules Committee not so much  
13 because I'm not done with my presentation to query  
14 Mr. Williams but to bring direct accusations against  
15 Mr. Williams. These are accusations which can be  
16 corroborated by other members of the Legislature, one, for  
17 example, Senator Nielsen, Senator Garamendi, by the Director  
18 of the Department of Finance, and by the Director of the  
19 Department of Social Services.

20 So let me stipulate in the beginning I am giving you  
21 the points of references for the accusations and the charges  
22 which I intend to make against Mr. Williams to submit my  
23 argument that he is not only not qualified nor trustworthy to  
24 be the deputy head of this agency, that if it were not for  
25 the fact that I in principle support the idea that the  
26 Legislature should not meddle into persons who are assigned  
27 to perform various jobs when they have responsibility. I  
28 would argue that the exact opposite of Mr. Agnos. He is

1 injurious to the GAIN Program. He is dismantling and has  
2 dismantled greatly the portions of contributions of the  
3 members of the Senate to GAIN.

4 I'm going to make some pretty harsh comments. I  
5 will stipulate in advance that these are my feelings. This  
6 has been my experience with Mr. Williams and so it is to be  
7 strictly coming from me and they represent my experience with  
8 him.

9 He is a liar, number one, an outright liar. He does  
10 it on purpose, structures it with intent and knowledge. He  
11 is dishonest. He has no commitment to the GAIN Program. In  
12 fact, I will make the case and will show you how he is really  
13 sending us down the tube. We're in serious, serious trouble  
14 of what folks like myself thought we were gaining and would  
15 GAIN. We are losing.

16 Now, why Assemblyman Agnos is his champion, of  
17 course, they're traveling the nation together. They are away  
18 someplace else while what we put together is just going  
19 willy-nilly. And we really right now are in danger of losing  
20 everything that I thought we had and I really find it really  
21 disheartening because this is my second time around this tree  
22 in the Reagan welfare reform package and what have you. I  
23 put these same features in it. They worked until they were  
24 dismantled. The only difference is now it's being dismantled  
25 early and, insofar as I can determine, not in the direction  
26 of -- from what I can determine, it's not at the direction of  
27 the Governor because when I talked with the Governor about  
28 it, he indicates that, no, that's not his intent and



1 specifically is this.

2 Last year Mr. Williams went into the administration  
3 and told them that the tax credit features of the GAIN  
4 legislation did not belong there. They were not put there.  
5 They were not agreed to. They were not a part of a package.

6 Now, Mr. Pro Tem, you know this very well. Senator  
7 Nielsen, Senator Garamendi and I fashioned the provisions of  
8 the legislation that went in from the Senate except for  
9 various amendments that were made in the Welfare Committee  
10 and with the exception, of course, of the child welfare, I  
11 mean, child care features. There was no debate. There was  
12 no argument. There was no dissent. David Swoap wanted to  
13 fold some of the features in differently than we did. I am  
14 the one that argued for structuring them as we did.

15 Mr. Williams was not present. He was never a part of any of  
16 those meetings. In fact, very frankly, Mr. Williams is not  
17 the same man that David Swoap is.

18 David Swoap is a person who is out to accomplish  
19 something and in spite of his and my differences in  
20 philosophy, in how we look at things, David Swoap is a man  
21 that I can respect. Mr. Williams is not a man that I can  
22 respect.

23 David Swoap is interested in accomplishing  
24 something. I have seen nothing out of Mr. Williams that  
25 tells me he is interested in accomplishing anything. But  
26 this man, without calling David Swoap, without coming to me,  
27 without talking to anybody, goes into the administration and  
28 says this wasn't part of the legislation. They were just

1 doing this for Bill Greene. This is what the man went inside  
2 and said.

3 I queried the individuals, I queried them as to who  
4 brought it inside the administration. I was told Carl  
5 Williams by the Director of the Department of Finance. I was  
6 told that by his director. You see, he doesn't know that  
7 some people have respect for one another and there's some  
8 things that they can talk about and share honestly and what  
9 have you.

10 This man, this man had the audacity, members, before  
11 my very Committee to charge that it was not true, that this  
12 was not a part of the legislation. Senator Neilsen was a  
13 witness to that. Senator Watson was a witness to that. This  
14 man had the audacity last year to come in to before my  
15 subcommittee which hears all of the budget of the entire  
16 Department of Social Welfare, not just GAIN, this man came  
17 into a Committee meeting to talk about the fiscal aspects of  
18 it with no more paperwork than he has right now. Came in  
19 with no more paperwork than he has before him right now.

20 We told him, we said, Mr. Williams, we can't make a  
21 decision on something like this, something of this magnitude,  
22 something that is, as I told him, something that is this  
23 important to me, there is no way in the world. This doesn't  
24 give us a view of anything. Then he wanted to peddle some  
25 kind of T.V. show, wanted somebody to go on T.V.

26 I said, Mr. Williams, we aren't talking about anyone  
27 going on T.V. We're talking about the State of California  
28 reforming the program which services people who are in need,

1 who are dependent. You see, Mr. Williams belongs to -- this  
2 is just my opinion -- he belongs to that cadre of people I  
3 guess that believes in a better welfare program. We thought  
4 we were making it plain that we were trying to change  
5 welfare. He already is turning around the direction of the  
6 program. That's what makes him dangerous. All of his  
7 comments here today, it shows where, you know, he hangs  
8 himself when you listen to the criticism that I have.

9 Now, everyone is talking about how clear I made it  
10 in my remarks on the floor and everything. Well, if I made  
11 it clear, I didn't talk about anything that he's talked  
12 about. I talked about education and training. Folks, GAIN  
13 is not about jobs. Yes, you know, there will be some, but  
14 it's not about jobs. It's about education and it's about  
15 training. The things that we can accomplish under GAIN is  
16 that 57 percent of women who have had babies who have not yet  
17 finished high school, we can put them back in school under  
18 GAIN, but we can't do it if we have leadership who describes  
19 it as a GED, the most insulting thing in the world. Who  
20 hires anybody with a GED? What is a GED? I wouldn't hire  
21 anybody with a GED and, Henry, I'm not hesitant to say it.  
22 No, I wouldn't hire them because they're not prepared.

23 When in this society did we say that a GED is  
24 equivalent to finishing high school? Education in this  
25 society is compulsory. What are we talking about? Why are  
26 these people any different? If you're running a program  
27 that's going to accomplish what this is supposed to  
28 accomplish, don't the people have to come through the same



1 cycle the rest of us come through or are they different? And  
2 if they are different, what chance of success is there?

3 You talk about cycles of welfare. This man is  
4 helping to perpetuate in this day and time genocide because  
5 that's what it is. We've got it on the books now. We came  
6 together. We got it on the books and people like that are  
7 standing in our way, members, they're standing in our way and  
8 they're dangerous and we better stop and examine it and we  
9 better stop and look at it because GAIN is not -- yes, there  
10 will be some people, hopefully. I mean, I would love to see  
11 it. This man even came, when they were developing the  
12 legislation, had the audacity to come to my office and say,  
13 "Well, can't we relax that a little bit?" I said, "No, you  
14 can't relax it."

15 This man I'm told by many members of the County  
16 Welfare Directors Association is really thwarting the will of  
17 the legislation, the intent of the legislation, in dealing  
18 with them. In fact, I'm scheduled, I've been meeting with  
19 some quietly and privately to kind of give them a view of  
20 what folks like myself who were involved in this legislation,  
21 what we were all about, what our goal was, what we hope for  
22 in this legislation, what we think it can be and should be  
23 because what's coming from him is taking many down the  
24 different path. You can check the county welfare directors.  
25 They'll talk to you briefly and they will tell you. I can  
26 even give you some key ones to check, to find out for  
27 yourself so you're not put in the posture of just taking Bill  
28 Greene's word. But I swear to you I would say the same thing

1 under oath.

2 I'm scheduled to appear before them in a special  
3 meeting or special gathering that they are having for me to  
4 address on this very, very, very same point. So we're going  
5 to lose the battle before we begin by a person that has no  
6 commitment to it at all who had nothing to do, nothing to do  
7 with those pieces that I'm talking about that were put in on  
8 the Senate side. He had nothing -- now, what he and Dave  
9 Swoap discussed, I don't know and I don't care and it's none  
10 of my business any more than it's anybody else's business  
11 what I discuss with my staff or what any of us discuss with  
12 our staff. I've told him several times, staff people are not  
13 decision makers. The legislators are the decision makers.

14 This man had the audacity to tell me that he took  
15 the word of my staff over me. I guess he thinks for some  
16 reason -- I certainly hope that there's no particular reason  
17 that he thinks that I don't run my operation as much as he  
18 runs his or any other legislators run theirs. In fact, I  
19 probably run it more than many with more hands-on involvement  
20 and probably more detailed informed. I certainly am more  
21 informed and I could certainly have given more precise and  
22 more immediate responses to some of the questions that have  
23 been asked by the members of this Committee.

24 I certainly am more in command of it that I do not  
25 come before a fiscal budget subcommittee with a folder  
26 containing maybe 50 pages when we're talking about a brand  
27 new program, a program such as GAIN and particularly when the  
28 Chairman of the subcommittee and another member of it -- in

1 fact, here you had Jim Nielsen and myself, two of us that  
2 were intimately involved with the Senate portions of GAIN.  
3 Our amendments are the ones that turn it into something,  
4 frankly. The Senate amendments are the ones that turn it  
5 into something. All they do with the Assembly portions is  
6 rework welfare.

7 The amendments that make it a program that has a  
8 chance of moving a person from dependency to independency are  
9 the provisions which relate to education, which relate to  
10 training.

11 The tax credit portion, I don't know what his  
12 argument was on that and I really wish he would explain that.  
13 Of course, I don't discuss anything with him any more because  
14 a person that would have the audacity to do that frankly in  
15 my opinion is, I'm above that. I don't get elected to deal  
16 with that and none of us gets elected to have to deal with  
17 that.

18 I consider it insulting not so much to me but to the  
19 legislative process and to the Legislature it represents an  
20 audacity which I've never encountered of people that have  
21 told me openly they didn't care too much about me, never  
22 frontally and to my face treated me like that.

23 But my argument is this. Is that a person who will  
24 take charge of administering and coordinating a program, who  
25 wants to be a deputy director in an agency which has sole  
26 responsibility for and misrepresents it to the public? This  
27 man has never said one comment here that GAIN is an education  
28 and training program. Yes, that's not the direction the



1 Committee went in, but when he responded to questions and had  
2 an opportunity, he didn't do that. He only did it under  
3 questioning by Senator Watson when he said well this is not a  
4 program which can produce jobs. Wasn't intended to be. No  
5 one thought it was. I certainly wasn't fool enough to think  
6 that it was.

7 I'm sure Senator Garamendi and Senator Nielsen were  
8 not fool enough to think that it was. I never sold it. I  
9 never talked to any of you members. You know this. Bill  
10 hears me every day. He's probably tired of hearing me talk  
11 about it. I never talked to him about it on that kind of  
12 basis. I didn't make that kind of presentation on the floor.  
13 I talked about education. I talked about training because  
14 who is going to hire anyone who has not finished high school?

15 It's a hoax on the public and we all know that if  
16 there are not jobs out there, we know you aren't going to --  
17 you know, I'm not saying some of these people won't find  
18 jobs. Some of them with just education will find jobs on  
19 their own, believe me.

20 What does it mean to a family to have a youngster in  
21 the family where you're trying to get the youngster to go to  
22 school, to not be a drop out, to do what they're supposed to  
23 do, the mother is on public assistance, and the mother  
24 doesn't go to school and the mother hasn't been to school?  
25 What does that represent to the family? You talk about  
26 family images, what kind of image is that, folks? Think  
27 about it.

28 I didn't come up with a home with those kind of

1 images. We had parents that whatever they were in, well,  
2 even in the WPA they had requirements that people met and  
3 they were requirements that were designed to be motivational  
4 and to be uplifting, not GED which as far as I'm concerned  
5 might as well say it's genocide. It's genocide. That's what  
6 it is. It's sophisticated, systematic genocide. They never  
7 will be employable. They never will be, folks. How do they  
8 get there? And for a person who is traveling the nation,  
9 when he's got legislation that says one thing and turn the  
10 other, what kind of person is that, folks? Just think about  
11 it now, just think about it, think about it. This man has  
12 never given this as a retort. He gave it as a response to  
13 Senator Mello, he says, well, yes, now this can be, is to  
14 prepare people to see that they're qualified, to see that  
15 they're motivated and see that they're reliable. Well, how  
16 do you do that? You do that with education. You do that  
17 with training.

18 So, gentlemen, the man, as I said, he's proven to me  
19 that he will lie. He told a lie on me. Oh, I went to the  
20 Governor with Senator Nielsen's assistance. Senator Nielsen  
21 knew because he was a part of it. We don't have any argument  
22 on it. Diane and other members were opposed to the whole  
23 package, all right, but there was no argument as you all know  
24 among those of us who were involved in trying to push it. We  
25 had our package put together. It represented thinking and  
26 talk and conversation that had gone on between us for some  
27 time. It was agreeable to everyone. Dave Swoap had known  
28 about this for some time.

1           A man who will claim to have had involvement in the  
2 legislation which he did not have, a man who will  
3 misrepresent what the Legislature says, a man who will  
4 misrepresent what the legislation is in the third place and a  
5 man who feels that he does not have to come before the fiscal  
6 subcommittees and make a presentation, and then a man who  
7 would be as weak in his presentation here, I really, I appeal  
8 to you, stop and think. Is this the kind of person that we  
9 want heading up this program regardless of what our reasons  
10 for it all because everyone who was for this had different  
11 reasons now. And there's no quarrel with that.

12           For me it represents salvation. It represents  
13 survival. See, I meant it when I said I am tired of seeing  
14 the women that I represented being pushed down into genocide  
15 such as this and I will oppose anyone who does it. I'm tired  
16 of it. I'm tired of seeing the youngsters that I represent  
17 mired in this trash. I'm tired of it. And it's the fault of  
18 the system. If the system is not developed to make it  
19 possible and, in fact, as I told everybody on the floor, yes,  
20 I am willing to go to my constituency and say I am willing to  
21 force you to go back to school, I'm willing to force you to  
22 go into training, yes, and I did it and I'm not taking any  
23 heat in my district for it because people know when you're  
24 trying to do something for them. They know and it's a damn  
25 lie that they resisted in the first place, and anybody who  
26 tells it either doesn't know or they're purposely telling a  
27 lie.

28           Mr. Williams comes in that category. He does not



1       deserve, as I said --now, find some other job for him in the  
2       agency. I have no argument about him there. But not only  
3       should he not be the Deputy Director, he should have nothing  
4       to do with GAIN. I have just the opposite view of Art Agnos  
5       in this except I'm not traveling the nation with Carl  
6       Williams.

7               Thank you very much.

8               CHAIRMAN ROBERTI: Is there any other opposition?

9               SENATOR CRAVEN: Mr. Chairman, I called for that  
10       earlier and there has been no one indicated.

11              CHAIRMAN ROBERTI: Then, Mr. Williams, you may  
12       rebut.

13              MR. WILLIAMS: Senator, I think some of Senator  
14       Greene's comments are based probably on a misunderstanding in  
15       my view. As you will recall, the GAIN Bill was signed in  
16       September 1985 and subsequent to that SB 71, a copy of which  
17       I have before me, putting in the job tax credit was signed on  
18       October 2nd of 1985 by the Governor. None of us at that time  
19       knew that the tax credit bill which was at that time linked  
20       to the federal jobs tax credit would lapse in December of  
21       1985, and when Senator Greene raised the question of an  
22       agreement that was made, I twice talked with David Swoap and  
23       asked him if he knew of any such agreement. He could not  
24       recall any and it put me in the awkward position of saying  
25       when the Department of Finance asked me and others, that I  
26       knew of no such agreement. As a staffer, I would not.  
27       Senator Greene would have negotiated that with somebody else,  
28       one of the principals. And I hold the principals that I knew

1 were involved --

2 CHAIRMAN ROBERTI: If people have questions of Mr.  
3 Williams, when he finishes his rebuttal then I would  
4 suggest --

5 SENATOR GREENE: May I just interject here, ask him  
6 did the original GAIN legislation have tax credit in it  
7 because, you see, he's going off, he's running around the  
8 bush.

9 CHAIRMAN ROBERTI: I want you to ask that as soon as  
10 he finishes.

11 MR. WILLIAMS: I'll respond to that, Senator. Yes,  
12 it did. And we supported tax credits. Yes, it did. That  
13 doesn't seem to me to be, however, the concern that was  
14 raised.

15 Senate Bill 71 which was, as I said, attached to,  
16 linked to the federal tax credits, lapsed at the same time  
17 the federal tax credits did in December of '85. We have no  
18 objection whatsoever to the tax credit. I am a strong  
19 supporter of tax credits. But when it came to a question of  
20 some specific agreement that had been reached, I have to say  
21 I did not know of any such agreement. And, therefore, when I  
22 was asked if I knew of any such agreement, I had to say I did  
23 not know.

24 That's all I care at this time Senator to rebut.

25 CHAIRMAN ROBERTI: Fine. Senator Greene.

26 SENATOR GREENE: Mr. Chairman and members, you heard  
27 his response to my point that it was in the initial GAIN  
28 legislation tax credit. All right. This man claims on the

1 other hand that he has so much to do with the development of  
2 the GAIN legislation, the man still -- and I still can't  
3 believe he still doesn't understand it at this date. We put  
4 the tax credit legislation in the GAIN Bill. There are many  
5 ways to shape tax credit legislation. At that time we  
6 decided all in agreement rather than taking that bill to try  
7 and work it out. We had a time factor. We had, folks, all  
8 kinds of points of view, all kinds of confusion. We said as  
9 the exact implementation, how we will implement this, we will  
10 come with the following bill. And if this is a man that has  
11 so much to do with the development of the legislation, that  
12 is so qualified to run this program, something as simple and  
13 as routine as that he should certainly understand and he  
14 hasn't even checked himself out yet. And if David Swoap told  
15 him what he says here, then David Swoap told me something  
16 differently. I know that's not unusual, but I will tell  
17 Mr. Williams that I'm going to pose it to Mr. Swoap in  
18 writing and ask him for a response regardless of what happens  
19 here with this confirmation to show one of us up as who is  
20 really misrepresenting. Because I don't believe, by virtue  
21 of how he handled it in the first place, I don't believe he  
22 talked -- David Swoap would never lie to me that I know about  
23 and anything that we -- we don't work together that much --  
24 but he has never lied to me on anything. I cannot say that  
25 for Mr. Williams.

26 So his explanation of this right now gives you a  
27 good example of what I'm talking about. It gives you a good  
28 example of what I'm talking about, and he wants to be the



1 head of it. He wants to be the head of it. He says it was  
2 in the original GAIN legislation and then he goes through  
3 this. See, he's trying to run you around the bush. We're  
4 talking about the same thing, members. For you information,  
5 Mr. Williams, I'm the one that put the first tax credit  
6 legislation on the books in the State of California, but I'm  
7 sure you wouldn't be that well informed.

8 CHAIRMAN ROBERTI: Senator Petris.

9 SENATOR PETRIS: Yeah. I'd like Mr. Williams to  
10 comment on the earlier statements of the Senator regarding  
11 commitment to the program and how it's working.

12 Now, the impression we get, and I didn't catch  
13 anything in your opening. That had mostly to do with your  
14 history rather than what's going on right now. I think it  
15 would be helpful to us if you could tell us how you see the  
16 program working now. How many counties are in it, what is  
17 their extent of progress, what are the strengths of the  
18 program as it's now being carried out and perhaps what the  
19 weaknesses? Because listening to Senator Greene, one gets  
20 the impression that it's going downhill very fast and is  
21 about to collapse and I'm sure your version or your view of  
22 the world from where you sit must be entirely different and I  
23 think you ought to tell us.

24 MR. WILLIAMS: Senator, as to commitment, let me  
25 just say that I work at this 24 hours a day and this is my  
26 only job and it is a most important job and I think probably  
27 the last best chance that we're going to have for this kind  
28 of reform in my career in government. If this doesn't work,

1 I don't know what other opportunities will come along. I  
2 doubt if there will be any. So I am committed to this.

3 Let me tell you a little bit about how we started  
4 out. The bill was signed in September of 1985. It took us  
5 some several months to put together a package of draft  
6 regulations on an emergency basis in accordance with the  
7 legislation. We involved everybody that we could think of,  
8 county level, other departments, the legislative staffs and  
9 so on and through that process developed a set of emergency  
10 regulations and subsequently through a very similar process  
11 in which the county welfare directors and staffs and so on  
12 worked closely with us, we put in a set of final regulations  
13 earlier this year.

14 At the present time we have some 17 plans have been  
15 submitted to us by counties. Of those, nine have been  
16 approved and the remaining eight are under consideration. We  
17 expect that most of these will be approved by early next  
18 calendar year.

19 In addition to that, we, based on surveys we've done  
20 with the counties, we estimate that some 36 additional plans  
21 will be submitted to us between now and June of '87. We  
22 expect that an additional 20 counties will be operating their  
23 GAIN Programs before the end of the fiscal year. So in  
24 effect three years and two months from the signing of the  
25 bill all of the counties, virtually all of the counties will  
26 be operating the GAIN Program. That is consistent with the  
27 phased in approach that the bill envisioned.

28 SENATOR PETRIS: Let me ask you -- I'm not that

1 familiar with the statute. Does it require each county to  
2 create a plan --

3 MR. WILLIAMS: That's correct.

4 SENATOR PETRIS: -- pursuant to the statute and  
5 submit it to your department for approval?

6 MR. WILLIAMS: That's correct.

7 SENATOR PETRIS: And is there a lot of variation  
8 from county to county?

9 MR. WILLIAMS: Yes, there is. We have experienced  
10 some problems with that. The facts are that we were all  
11 learning in the early stages of this program, the counties as  
12 well as us, and there were some mistakes made. It required  
13 us a little more effort than we thought it would to review  
14 some of these plans and make the corrections in them, but  
15 each county designs a unique plan to fit its own resources  
16 and economic conditions and so on and submits that plan to us  
17 for review. We review it and upon approval -- and there are  
18 two aspects to this. There is the program side and the  
19 fiscal side. We review it and then come up with a, in  
20 effect, a negotiated amount of money to run the program based  
21 on what amounts to compromise between the county's  
22 assumptions and state assumptions concerning the numbers and  
23 types of individuals that will go through the program.

24 SENATOR PETRIS: How many have been approved, how  
25 many counties?

26 MR. WILLIAMS: Nine counties.

27 SENATOR PETRIS: Does that include agreements with  
28 the school districts or the Department of Education?



1 MR. WILLIAMS: Yes. The state Department of  
2 Education has set aside roughly three million dollars to  
3 cover the additional cost for average daily attendance in the  
4 adult schools because of the GAIN caseload, and we recently  
5 concluded a method by which that money would be distributed  
6 to local school districts. It would be based essentially on  
7 agreement between the local school district and the county.  
8 So it would be reflected in the county plan.

9 SENATOR PETRIS: That's only for the head counts,  
10 ADA?

11 MR. WILLIAMS: Yes. I mean, I'm not sure I  
12 understand, Senator, head counts.

13 SENATOR PETRIS: You said they set aside three  
14 million dollars the state department for ADA, you mean for  
15 funding of those students?

16 MR. WILLIAMS: For funding GAIN students in  
17 remediation.

18 SENATOR PETRIS: Now, in connection with the role of  
19 the Department of Education, as I recall -- see, I haven't  
20 been in on any of this. I'm on the fringes. But as I  
21 remember the Senate's concerns, one of our heavy emphases was  
22 on child care.

23 MR. WILLIAMS: Yes.

24 SENATOR PETRIS: As I understand, there's a problem  
25 that developed as to who had jurisdiction. For example, the  
26 Senate people expressed concern about having the very strong  
27 child care provisions that would enable the mothers to go off  
28 to school and not worry about the children, and the latchkey

1 and so forth. But under some statute there was an  
2 interpretation that prohibited the creation or appropriation  
3 of money under this program to any school districts that  
4 didn't already have child care centers.

5 MR. WILLIAMS: I think I know what --

6 SENATOR PETRIS: Remember that? Senator Roberti  
7 carried a bill to authorize that.

8 MR. WILLIAMS: Yes.

9 SENATOR PETRIS: Which was vetoed by the Governor.

10 MR. WILLIAMS: Yes.

11 SENATOR PETRIS: So the question is, has that left  
12 all of those districts that didn't have them before out in  
13 the cold and, secondly, what was the role of the department  
14 in that veto? Did you personally advise the Governor about  
15 the importance of this so that he wouldn't veto it? Would  
16 you enlighten us on that.

17 MR. WILLIAMS: Excuse me. I'm afraid I can't  
18 respond to that. I don't know what our official position was  
19 on the bill. We knew that it was a cleanup, piece of cleanup  
20 legislation that was intended to solve some of the problems  
21 that developed in the Senate Bill 303 latchkey, and we were  
22 very much concerned at the department and pressed very hard,  
23 the Department of Education, on the question of who was  
24 getting access to this money because what we saw happening in  
25 the early stages from our viewpoint was that those providers  
26 that were already out there and established were getting the  
27 lion's share of the money in our view and we wanted to make  
28 sure that other organizations, other school districts or

1 private nonprofits and so on could also get access to that  
2 money.

3 SENATOR PETRIS: Apparently under the law they  
4 couldn't without a change in the law?

5 MR. WILLIAMS: That may have been the  
6 interpretation, Senator, of the Department of Education. It  
7 was not our interpretation. We didn't see it that way.

8 SENATOR GREENE: It was the interpretation of those  
9 who voted for the legislation.

10 MR. WILLIAMS: We didn't see it that way. We didn't  
11 think it did restrict it. I think the argument that was made  
12 initially -- now, I am recalling a conversation with  
13 representatives of Department of Education -- was that  
14 because of the compressed time frame to get that money out,  
15 that there was a certain amount of ease in putting that money  
16 out to those organizations already established.

17 SENATOR PETRIS: It seems odd to me that the  
18 Governor would veto that bill. It seems to me that everybody  
19 in that program on the executive side would have tried very  
20 hard to persuade the Governor to sign it. We get that  
21 problem all the time in a different connection.

22 For example, we get bills solving problems at the  
23 local level at local request because you have a difference of  
24 interpretation in the law. Let's say in the school field  
25 some county counsels interpret a statute one way that gives  
26 their local school boards authority to do this and that and  
27 other county counsels interpret it as lacking that authority.  
28 And so they come to us and they say, well, it's usually those



1 who are on the positive side, you might say, come to us and  
2 say, "Look, we're doing it this way, but these other  
3 districts feel they don't have authority, so let's make it  
4 clear." It seems to me that's the kind of statute that the  
5 Senator was carrying to make it easier.

6 MR. WILLIAMS: Senator, it comes back to me now. I  
7 talked with representatives of Senator Roberti's office on  
8 that bill. There was one provision in it that was causing  
9 some concern. We got that resolved and indicated that we  
10 would support the legislation. As to why the Governor,  
11 Governor's office vetoed it, I'm afraid I don't know.

12 CHAIRMAN ROBERTI: Would you support it again this  
13 year?

14 MR. WILLIAMS: Senator, if it looked the same as it  
15 did last year, I would support it again.

16 CHAIRMAN ROBERTI: The Governor's veto may have had  
17 nothing to do with the legislation.

18 MR. WILLIAMS: I've heard that suggested, too,  
19 Senator.

20 CHAIRMAN ROBERTI: I don't know that for sure.  
21 Senator Greene.

22 SENATOR GREENE: Members, I now have a foundation on  
23 which to let you see by Mr. Williams' response exactly what  
24 I'm talking about.

25 Mr. Williams, in this society we do stipulate that  
26 persons are subject to the laws of compulsory education until  
27 they're 18. Is this correct or incorrect to the best of your  
28 knowledge?

1 MR. WILLIAMS: That's my understanding.

2 SENATOR GREENE: What percentage of welfare  
3 recipients are less than 18 years old, just a good guess,  
4 State of California?

5 MR. WILLIAMS: It would be roughly two-thirds of  
6 them because --

7 SENATOR GREENE: Fine. Two-thirds of them. So that  
8 means that two-thirds of them are subject to the laws of  
9 compulsory education; is that correct or incorrect?

10 MR. WILLIAMS: That's correct.

11 SENATOR GREENE: What is your definition of  
12 remediation.

13 MR. WILLIAMS: Remediation can include many things.  
14 The way it's been framed in the statute --

15 SENATOR GREENE: I asked you what is your definition  
16 of remediation because I know what the statute says because  
17 those are the parts of the statute I wrote. So I don't need  
18 to have you explain that to me.

19 MR. WILLIAMS: Senator, assuming that not everybody  
20 has the capacity to graduate from high school and get through  
21 high school, it can mean anything from remediation in basic  
22 reading and writing, in math, it can include English as a  
23 second language and all of that anywhere from improvement of  
24 several years, all the way up through high school. And, in  
25 fact, it could include, I know that you don't care for the  
26 GED, but it could include that because at least in some  
27 quarters the GED is accepted as an equivalent of high school.

28 SENATOR GREENE: You said some people are not

1 equipped or not able to graduate from high school. Who are  
2 those folks? Where do we have any standard or any  
3 measurement of that? What code stipulates that we recognize  
4 a factor such as that? How do we arrive at it and who makes  
5 that decision?

6 MR. WILLIAMS: I don't know, Senator.

7 SENATOR GREENE: But you gave it to me in a response  
8 to a question.

9 MR. WILLIAMS: I just know that there are some  
10 people who don't have the capacity.

11 SENATOR GREEN: How do you know that?

12 MR. WILLIAMS: Well, because there just are some  
13 people who can't --

14 SENATOR GREENE: How do you know that, sir?

15 That's a fair question. You stipulate it, so you  
16 must have a measurement or some rationale in your mind that  
17 leads you to that conclusion.

18 MR. WILLIAMS: Because they are already behind at  
19 the second and third grade of education and can't read or  
20 write.

21 SENATOR GREENE: But because they're behind says  
22 they do not have the ability to do it or does it say that  
23 they're behind?

24 MR. WILLIAMS: I don't know, Senator, what the  
25 reason is, but some people just don't have the capacity. I  
26 think that --

27 SENATOR GREENE: Sir, that's really serious, and  
28 that gets to my point. How do you determine that and if you

1 say you determine it because they're behind, there are things  
2 here in this Legislature that I'm behind my colleagues on.  
3 Are you saying that I do not have the capacity to learn it at  
4 any time or that anybody in a similar situation that they do  
5 not have the capacity merely because they're behind? Is that  
6 what you're saying is the governing factor?

7 MR. WILLIAMS: No. Senator, I'm trying to draw the  
8 distinction between equal opportunity is not the same thing  
9 as equal results.

10 SENATOR GREENE: I didn't say anything about the  
11 results. I said compulsory education. That's what I'm  
12 talking about. How do you make the decision that a person  
13 isn't going to school? Are you a dictator or a Nazi or  
14 something?

15 MR. WILLIAMS: No. As a matter of fact --

16 SENATOR GREENE: How do you make that decision, sir?  
17 On what basis? I'm really serious. That's a serious  
18 question.

19 MR. WILLIAMS: We're using screening, standardized  
20 screening tests prepared by the educational establishment to  
21 screen people --

22 SENATOR GREENE: Where are you doing that?

23 MR. WILLIAMS: All over.

24 SENATOR GREENE: Where?

25 MR. WILLIAMS: Every county operating GAIN.

26 SENATOR GREENE: You're not doing it in Fresno.

27 MR. WILLIAMS: Yes, we are.

28 SENATOR GREENE: Who's operating it in Fresno?



1 MR. WILLIAMS: The County Office of Education is  
2 administering the test for Fresno County.

3 SENATOR GREENE: And so you say you're just  
4 automatically screening people out?

5 MR. WILLIAMS: No, sir.

6 SENATOR GREENE: The legislation does not call for  
7 that. What section of the legislation calls for that?

8 MR. WILLIAMS: No, sir, people are not being  
9 screened out.

10 SENATOR GREENE: But, sir, what section of the  
11 legislation then calls for that?

12 MR. WILLIAMS: I can't cite that, Senator.

13 SENATOR GREENE: Does one exist to the best of your  
14 knowledge?

15 MR. WILLIAMS: There is a requirement to provide  
16 remediation.

17 SENATOR GREENE: There's a requirement to provide  
18 education. First word in the paragraph. Am I correct or  
19 incorrect?

20 MR. WILLIAMS: I don't have the bill with me,  
21 Senator.

22 SENATOR GREENE: Well, you know, we've had this  
23 before many oversight hearings, we've had it before, so come  
24 on, Mr. Williams, please. I mean, you boxed yourself into  
25 this, so please respond to my questions. I mean, that's just  
26 normal courtesy. I know that might be strange to you, but I  
27 mean, I'm asking you fair questions.

28 MR. WILLIAMS: I'm trying to respond to you,

1 Senator.

2 SENATOR GREENE: Then are you unable to respond?

3 MR. WILLIAMS: I don't believe I can satisfy you  
4 with an answer.

5 SENATOR GREENE: I'm just asking for what the  
6 legislation says, that's all.

7 MR. WILLIAMS: I believe it says remediation,  
8 Senator, and I believe that includes English as a second  
9 language --

10 SENATOR GREENE: But does it say remediation first?

11 MR. WILLIAMS: It says remediation and it provides  
12 in my view --

13 SENATOR GREENE: But, sir, my question is does it  
14 say remediation first?

15 MR. WILLIAMS: I don't know which is first, Senator.  
16 I can't recall that line for line.

17 SENATOR GREENE: Well, it does not.

18 All right, now, if these people -- wait a minute.  
19 You say until you can provide for organizations out there,  
20 what organizations does the legislation call for? The public  
21 system of education is the system of education that is  
22 recognized in this society to educate people. What  
23 organizations out there are authorized under law to issue  
24 diplomas or the same identical type of certification to  
25 ascertain or to certify that a person has completed a certain  
26 level of minimum level of study or a minimum accomplishment,  
27 what law authorizes what organizations out there to issue  
28 that diploma?



1 MR. WILLIAMS: I don't know, Senator.

2 SENATOR GREENE: Are there any to the best of your  
3 knowledge?

4 MR. WILLIAMS: No, Senator, I --

5 SENATOR GREENE: All right. So when you are going  
6 out attempting to contract with organizations, you are also  
7 going outside the realm of the law to satisfy the portions of  
8 that law that relate to education because the legislation  
9 says nothing about organizations.

10 Another question that arises, members, is why would  
11 you be putting people who have not finished high school, you  
12 know, there's nothing to remediate because they haven't gone  
13 through education in the first place, but why would you be  
14 putting them in adult education when they can enter the  
15 normal population of students? They are below 18 years old.  
16 They still are subject to our compulsory education laws. So  
17 why would you have to put them in adult education?

18 MR. WILLIAMS: Senator, there's nothing to preclude  
19 them from going back to regular high school. There's  
20 nothing in the statute or --

21 SENATOR GREENE: But you didn't say regular high  
22 school. You said adult, in your responses here and your  
23 comments, you said adult education. That's a distinct  
24 element of education separate and apart from the normal  
25 course of education; is that correct?

26 MR. WILLIAMS: Yes, Senator. When I'm talking about  
27 the remediation, that's for courses that would be determined  
28 short of a high school diploma. Those would be conducted

1 principally in the adult education area and those are the  
2 ones that are going to be funded out of this special fund I  
3 mentioned, three plus million. Now, those students who are  
4 eligible --

5 SENATOR GREENE: Those in adult education.

6 MR. WILLIAMS: Most students who are eligible for  
7 mainstream high school attendance certainly can go there and  
8 no objection.

9 SENATOR GREENE: Why aren't you bursting the doors  
10 down now with those people coming through the doors and why  
11 have you not -- you have not come to any agreements with the  
12 state Department of Education because I've had educators  
13 complaining to us blaming the Department of Education. When  
14 we talk about Department of Education they said they have not  
15 been able to sit down with you and your people, that nothing  
16 in this area has been finalized, that you've acted as if you  
17 had no interest in it. You certainly have not come to any  
18 formalization with any local school district. Am I given  
19 correct information or incorrect information?

20 MR. WILLIAMS: Incorrect, sir.

21 SENATOR GREENE: In toto incorrect?

22 MR. WILLIAMS: It's virtually all --

23 SENATOR GREENE: What is your agreement with the  
24 Department of Education and where is the document?

25 MR. WILLIAMS: Our agreement was to provide a means  
26 for the school districts to obtain that ADA funding from the  
27 Department of Education that has been worked out and that's  
28 been distributed according to the Department of Education to

1 all school districts.

2 SENATOR GREENE: Well, you don't get ADA until after  
3 a student is there. So you don't need no money up front. We  
4 don't provide ADA up front. ADA approves, it's called  
5 average daily attendance. So the attendance has to take  
6 place first. So you don't need any large amounts of money up  
7 front. So what precludes you from proceeding? What dollars  
8 do you need? And are these students being put in or have you  
9 set the procedures for these students to be put in the  
10 schools on a basis any different students coming through?

11 MR. WILLIAMS: Senator, we found when the counties  
12 talked with the local school districts --

13 SENATOR GREENE: Sir, please, it's true that the  
14 counties work out a plan, but that is within the parameters  
15 of the legislation and the regulations which are developed.  
16 So they're parameters which are established. So I've been  
17 here for 21 years, sir, and all the other members are, you  
18 know, whatever you're going to say, say it differently  
19 because it's really a little insulting for you to come back  
20 there. It's certainly insulting to me because we know better  
21 and we don't do that for any citizen coming through. And you  
22 really ought to listen to how you sound when you say it like  
23 that.

24 Now, I'm not asking you to agree with me, but I'm  
25 asking you to answer the questions within the realm of  
26 reality.

27 MR. WILLIAMS: I'm trying to, Senator. When the  
28 school districts discuss this with the county welfare

1 departments, many of them said that they were at their caps  
2 on ADA and were in effect refusing to take any additional  
3 students until they had reasonable assurances that they would  
4 be getting the money needed to teach those students. That  
5 was a hang up that caused us a problem in several counties.  
6 It wasn't a problem in other counties because in some  
7 counties there was sufficient ADA available and the county,  
8 the school districts were more than willing to take the  
9 students.

10 The agreement that was worked out with the  
11 Department of Education dealt with the former cases, that is,  
12 those cases where they had capped out at their ADA and were  
13 worried that they would have a large number of students  
14 coming to them and they wouldn't have the money to provide  
15 for them.

16 SENATOR GREENE: Sir, the cap relates to vocational  
17 education and adult education. It does not -- there is no  
18 cap. There is no way to set a cap for a general education  
19 and none exists on the books. Now, did you, when you were  
20 told that, did you check it out to ascertain whether that was  
21 correct or incorrect?

22 MR. WILLIAMS: Senator, we weren't told there was a  
23 problem at all in the regular high school attendance. We  
24 know of no problem.

25 SENATOR GREENE: Well, why aren't you telling the  
26 people to channel those people into the schools? They need  
27 it. They need to learn how to add, subtract, multiply,  
28 divide, read, write, because they are going to need it just



1 to exist in life.

2 MR. WILLIAMS: Most of the people that we're dealing  
3 with of course are over 18.

4 SENATOR GREENE: No. You've already said that  
5 two-thirds of them were under 18.

6 MR. WILLIAMS: Those are the children, sir. Those  
7 are not the adults in the GAIN Program.

8 SENATOR GREENE: I asked you which recipients and  
9 your response was --

10 MR. WILLIAMS: Two-thirds, yes.

11 SENATOR GREENE: Well, you're incorrect in the  
12 figures there. I know the figures better than you do.

13 Mr. Chairman and members, this is an example of what  
14 I'm talk about. This man is changing what we wrote. And  
15 what is frightening to me, he's talking about they're going  
16 to make the judgment on -- that's like saying almost making  
17 the judgment on who lives and who dies because let's face it  
18 folks, regardless of how we feel, if you're not equipped,  
19 you're not going to survive and this man is making that --  
20 and he sits up here with a straight face and says that to us,  
21 you know, make a decision of education isn't for them. Yeah,  
22 they might be behind, might take them longer, but that  
23 doesn't mean they can't learn.

24 I tell you what, they can go out there on the  
25 streets and hustle pretty well. So if you've got  
26 intelligence enough to hussle, you can learn.

27 CHAIRMAN ROBERTI: My suggestion is since this has  
28 reached a level of controversy, that we have until January

1 the 6th, which is the first day we're back --

2 MS. MICHEL: We would have to do it the first day  
3 we get back.

4 CHAIRMAN ROBERTI: What's the last day that Mr.  
5 Williams' confirmation can be voted on?

6 MS. MICHEL: Since you won't be in session, it  
7 would have to be that first Monday. His time would expire  
8 between Monday and Thursday.

9 CHAIRMAN ROBERTI: Well, yes, but the last day is  
10 the 6th.

11 MS. MICHEL: Correct, and we're back on the 5th.

12 CHAIRMAN ROBERTI: So we could act on the 5th or the  
13 6th?

14 MS. MICHEL: If you had session on the 6th,  
15 correct.

16 CHAIRMAN ROBERTI: If we had session on the 6th.

17 Well, I would suggest therefore at this point that  
18 we put this over until January the 5th so that we can discuss  
19 the matter. Maybe some of the points that Senator Greene has  
20 raised can be addressed, I'm not positive, but I would  
21 suggest that maybe that is something we should try.

22 Senator Petris.

23 SENATOR PETRIS: Well, yeah, I actually got  
24 distracted from my line of questioning which was to get as  
25 clear a picture as I could on what's happening right now and  
26 I got some idea and perhaps at the next meeting you can tell  
27 us if any other districts have come on line, for example, if  
28 the plan is proceeding according to schedule, and I'd like to



1 get a pretty good idea of how the thing is actually working  
2 from your point of view being right on top of it.

3 Thank you.

4 CHAIRMAN ROBERTI: Thank you, Senator.

5 Senator Mello.

6 SENATOR MELLO: I agree with your thought of putting  
7 it over. If I had to vote on this today I think I would  
8 respect what Senator Greene and Watson had to say. They  
9 raised some very powerful points here that would leave me  
10 with no conclusion but to support their position. But I  
11 think in all fairness to Mr. Williams, if we do put it over,  
12 rather than just have a rehash of what we're doing here now,  
13 the question are we going to learn anything we don't know now  
14 unless we assign something to the staff to come up with. And  
15 that is some of the issues raised by both Senator Greene and  
16 Watson and perhaps Petris, if we can get some answers back,  
17 whether they're answerable or not, I don't know. The tax  
18 credit seems to be one issue, you know, the so-called  
19 philosophy about whether or not we're just going to run  
20 people through the mill without really placing them in jobs  
21 as Senator Greene points out, it would be a commitment to  
22 make sure that people do become employable. If we can get  
23 those kinds of questions back, then I think we'd be more able  
24 to vote on this than we are right today.

25 SENATOR GREENE: May I say something? I would  
26 appeal to the members, several of the things I said I gave  
27 specifics that you can check on your own. I appeal to you to  
28 check them. And then it won't be my opinion. You will get a

1 readout of your own. I told you the people that stipulated  
2 who stated that Mr. Williams took this inside. He is the  
3 only one that was confused on it. No one else was. He  
4 didn't come to me, incidentally, and ask me, but I guess I  
5 didn't matter. I was only the author.

6 I would also invite you to check with Mr. Swoap. I  
7 think Mr. Swoap, and I'll give you his phone numbers, both at  
8 home and his offices if you don't have it, because I talked  
9 with him recently because he had implored me to not feel as I  
10 do, but I told him that my commitment was as strong as it  
11 ever was and I had no alternative and that I felt that I  
12 would be walking away from a principle.

13 So I would hope, my appeal is to check out the  
14 sources that I've indicated and then go back and read the  
15 legislation itself that you voted on and see what it says.  
16 That's what I would appeal to you to do.

17 CHAIRMAN ROBERTI: Thank you, Senator. We'll resume  
18 the hearing on Mr. Williams on January the 5th.

19 MS. MICHEL: You want a hearing?

20 CHAIRMAN ROBERTI: Well, with any new material.

21 MS. MICHEL: New material will be provided before  
22 that time.

23 CHAIRMAN ROBERTI: Which I hope will be provided to  
24 us sometime before then.

25 MS. MICHEL: Yes.

26 CHAIRMAN ROBERTI: Thank you, Mr. Williams.

27 (Thereupon the Hearing before the Senate Rules  
28 Committee was adjourned at 5:15 p.m.)



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I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

ALSO PRESENT

BION GREGORY, Legislative Counsel

DONALD A. RUSTON, Esq.  
Attorney for Defendant Schmitz

GLORIA ALLRED, Plaintiff

EDWARD TABASH, Esq.  
California Abortion Rights Action League

THOMAS J. COLEMAN, JR., Director of Legal Services  
Los Angeles Gay and Lesbian Community Services Center





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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The Committee will come to order.

We have the special order of business, and 2:00 o'clock having arrived, consideration of the question of the payment of the settlement in the case of Allred versus Schmitz.

We have a Statement of Necessity of Payment by Legislative Counsel on record that payment should be forthcoming, and we would like him to state the legal reasons as to what obligations he sees before the State Senate in regard to the settlement, and we'll take testimony in support of this. Then anyone in opposition will be invited to come forward.

Mr. Gregory.

MR. GREGORY: Mr. Chairman, Bion Gregory, Legislative Counsel of California.

Appearing with me is Don Ruston, an attorney in private practice in Southern California, who was retained by the Senate Rules Committee to represent itself and Senator Schmitz in the litigation and the trial of Allred versus Schmitz.

Pursuant to your authorization, Mr. Ruston has entered into some of the negotiations with the Plaintiff in this case and is here to outline for you the result of those negotiations and the terms of the settlement.

MR. RUSTON: Senators, basically what happened in this particular matter, without going into details as to the early happenings in the case, which I think you may be familiar with, is after I was retained and entered into the defense of Senator



1 Schmitz on behalf of the State Senate and the Rules Committee, is  
2 that we had certain motions that were made, started to do some  
3 discovery because that had not been completed, including the  
4 taking of the deposition of Gloria Allred, at which time we  
5 entered into settlement negotiations. And I recommended that the  
6 case be settled because I could foresee, because of certain  
7 rulings, defenses, and other things that had occurred, that if  
8 this case went to trial, regardless of which side won, there  
9 would probably been an appeal, and there'd be attorneys' fees,  
10 and costs incurred would be far in excess of what I hoped the  
11 case could be settled for.

12 Therefore, in order to expedite the matter, save tax  
13 payers' money, to bring the litigation to an end, albeit to  
14 reduce my fee as well as the costs, I thought it was best to  
15 settle the case. I therefore sought authority, and we had  
16 negotiations, and we arrived at a settlement with the assistance  
17 of Judge Savage of the Los Angeles Superior Court in a settlement  
18 conference. He has reserved the right to enforce the settlement.

19 The settlement was for the payment of the sum of  
20 \$20,000, plus the issuance of a statement termed an Apology by  
21 former-Senator John Schmitz, which was negotiated as to the  
22 wording of that. That was then given to the Court. The Court  
23 did announce that in open court and read the Apology.

24 The only thing, therefore, remaining of the order to  
25 consummate the settlement would be the payment of the sum of  
26 \$20,000, which was the amount that was agreed upon between the  
27 parties in this litigation, as I say, with the assistance of the  
28



1 Court, in which I recommended then and recommend to you now,  
2 because I believe it would be a great savings to the taxpayers.  
3 I think it would be less than would be entailed with regard to  
4 trying the matter, and I further feel that if we did proceed to  
5 litigation on this matter, I feel confident that we have a good  
6 case, we would win, but nevertheless why spend more money than is  
7 necessary.

8 That's the reason that the settlement was made, and  
9 those are the terms.

10 I can, if you desire, read the Apology that was issued,  
11 but it has already been published and was authorized by Senator  
12 Schmitz.

13 CHAIRMAN ROBERTI: Make the record complete. Please do  
14 so we have some idea.

15 MR. RUSTON: Yes, sir.

16 As indicated, the wording was agreed upon, and the  
17 following wording was made and was read and announced by Judge  
18 Leon Savage. It's entitled "Apology by John Schmitz".

19 "On December 22, 1981, a press  
20 release was distributed to the newspapers  
21 in Sacramento from the State Senate  
22 Constitutional Amendments Committee,  
23 entitled "Biggest Hearings in California  
24 History." A copy of that release is  
25 attached hereto.

26 "This release contained references  
27 to Gloria Allred and certain groups with  
28





1 language that could have been taken in a  
2 derogatory manner and should not have  
3 been stated and were wrongfully included  
4 therein. Because the release was on  
5 official stationery, I recognized  
6 responsibility for its contents, and I  
7 stood behind it.

8 "I apologize to Gloria Allred, and  
9 to all others who may have been  
10 wrongfully characterized, hurt or harmed  
11 in any way by these statements.

12 "I specifically apologize to Gloria  
13 Allred for any embarrassment or harm the  
14 release may have caused her and retract  
15 all references to her.

16 "Based upon my past relationships  
17 with Gloria Allred, her husband and  
18 family, I have never considered her to be  
19 and recognize that she is not a 'slick  
20 butch lawyeress.'

21 "Further, I have known Gloria Allred  
22 as an active and well known prominent  
23 lawyer and public figure in the area of  
24 women's rights, and believe she and any  
25 other citizen has a right to be heard in  
26 any public hearing on those issues  
27 involving diverse public issues,  
28



1 particularly human rights, without being  
2 subjected to personal attacks."

3 That was the Apology that Senator Schmitz authorized.  
4 It was read and then announced as a part of the settlement, so  
5 that we have then only the money part to conclude.

6 CHAIRMAN ROBERTI: Mr. Gregory, you've indicated to me  
7 on a number of occasions that it's your best recollection, or  
8 it's your best information that Mr. Schmitz was not the author of  
9 the statements.

10 That conflicts with earlier information that this  
11 Committee received through newspaper publications or whatever  
12 sometime ago.

13 I'd like you and maybe those who come up in opposition  
14 to address that point.

15 MR. GREGORY: I think Mr. Ruston may be able to address  
16 that point. He has with him excerpts or the entire depositions  
17 of Brad Evans, the staff person who wrote the press release, and  
18 Senator Schmitz, which deal with that particular issue.

19 MR. RUSTON: I not only have those, Senator, but I also,  
20 when I was retained in this case, made contact with the personnel  
21 that was in the office, that is in the committee office of the  
22 Constitutional Rights.

23 In talking to those individuals, and they included three  
24 ladies, one of whom I could not contact, two of whom I did who  
25 were in Sacramento, including one who typed the release, helped  
26 -- and the two who helped distribute it.

27  
28



1           They told me that Brad Evans drafted it. There was a  
2 policy that any press release would be cleared with Senator  
3 Schmitz, and it was not. They tried to contact him before the  
4 release came out, but it was during the Christmas holidays and  
5 were unable to do so. And because of the timing, Brad Evans  
6 insisted that it be distributed to boxes here in the Capitol.

7           There was one revision made to it by them on their own  
8 because they knew that Senator Schmitz would probably not approve  
9 it, but nevertheless they distributed it.

10          In the testimony in the deposition of Mr. Brad Evans, he  
11 indicates that he did not clear it with Senator Schmitz. He  
12 drafted it. That he did not even know that Senator Schmitz knew  
13 Gloria Allred, was not aware of her status.

14          Senator Schmitz confirms in his deposition that he did  
15 not see it and did not approve it in advance. And the first time  
16 that he was aware of it is when he was confronted by a reporter  
17 who had the release and part of the publication.

18          Further, I contacted the local representative in  
19 connection with the committee, that is who was in the Newport  
20 Beach area where Senator Schmitz maintained an office within his  
21 district, and determined that she was contacted by the people in  
22 Sacramento. She was unable to find Senator Schmitz to talk to  
23 him about this release before it was put out.

24          I can read to you, if you desire, the portions of the  
25 depositions concerning that particular part of it. I have it  
26 here, but I will assure you that I investigated that, and in fact  
27 in the Apology, you will note there's nothing stated therein to  
28





1 say that he made the statement and he retracted it, but rather  
2 that it was issued out of that.

3 I therefore think the Apology itself confirms that fact.

4 CHAIRMAN ROBERTI: Thank you.

5 On related questions, Mr. Gregory, what are the options  
6 before the Senate Rules Committee if we did not approve the  
7 settlement? What would be the course of action?

8 MR. GREGORY: If you do not approve the settlement, of  
9 course, we would have to make some showing before the Judge to  
10 justify the action of the Committee, because the Committee had  
11 authorized Mr. Ruston to enter into these negotiations, and the  
12 Judge is, of course, fully aware of that. Negotiations were  
13 entered into on the basis of the authorization given to Mr.  
14 Ruston.

15 Of course, the authorization has already been given, and  
16 the settlement is really here for the review of the Committee.

17 But if the settlement does not go forward, then of  
18 course the case then --

19 CHAIRMAN ROBERTI: But isn't it an appropriation?  
20 Wouldn't an appropriation have to be appropriated by the  
21 Committee?

22 MR. GREGORY: Well --

23 CHAIRMAN ROBERTI: Do we have the power to delegate to  
24 an individual which --

25 MR. GREGORY: Well, you did delegate, but you delegated  
26 to --  
27  
28



1 CHAIRMAN ROBERTI: Yes, but based on our right to make  
2 final authority on appropriating --

3 MR. GREGORY: But you delegated to him within certain  
4 parameters, and those parameters have not been exceeded in this  
5 particular settlement. If they had been, of course, obviously he  
6 would have been without authority.

7 If the settlement does not go through, then of course  
8 the case then will go on for trial.

9 SENATOR CRAVEN: Question.

10 CHAIRMAN ROBERTI: Senator Craven.

11 SENATOR CRAVEN: Mr. Chairman, I'm a bit confused. I  
12 thought that we had at a prior time discussed this issue,  
13 including the monetary settlement, which I thought had been  
14 raised.

15 Am I incorrect in the fact that a stipulation had been  
16 made as to the amount of judgment?

17 MR. GREGORY: There was a limit placed by the Committee  
18 on the amount Mr. Ruston was authorized to offer, and that  
19 proposed settlement is within that dollar amount.

20 SENATOR CRAVEN: I see. Has the other side agreed to  
21 that amount?

22 MR. GREGORY: Yes.

23 SENATOR CRAVEN: What, then, is the issue that is before  
24 us?

25 MR. GREGORY: Well, the Committee just requested to  
26 review the proceeding to, I think, ensure that --

27

28



1 CHAIRMAN ROBERTI: The issue before us is a formal vote  
2 on the settlement.

3 SENATOR CRAVEN: A formal vote on the settlement.

4 CHAIRMAN ROBERTI: That's right.

5 SENATOR CRAVEN: Very well. Thank you.

6 CHAIRMAN ROBERTI: Any further questions?

7 SENATOR MELLO: Mr. Chairman.

8 CHAIRMAN ROBERTI: Senator Mello.

9 SENATOR MELLO: What I'd like to have you review, when  
10 you said on behalf of the taxpayers, Ms. Allred in her letter  
11 said there's no legal reason to, for the Senate to force the  
12 taxpayers of California to pay the cost of former-Senator  
13 Schmitz.

14 Would you state once again where do we come in and  
15 become liable and responsible for the payment of this settlement?

16 MR. RUSTON: I think I can answer that, Senator, in two  
17 ways.

18 The Government Code Section 995, whenever a person has  
19 been sued where they have been acting as a representative of  
20 their governmental entity, whether it be the state, county, city  
21 -- and incidentally, I've had many of these in the 30-some odd  
22 years that I've been practicing because I've represented well in  
23 excess of 60 or 70 governmental entities during that time so that  
24 I've had this come up before -- as long as that claim is made,  
25 there is an obligation under that code section, unless you fall  
26 within certain exceptions that are in Subsection .2 and .4 of  
27 that section, to defend.  
28





1 In this particular instance, early on, a taxpayers'  
2 group in Sacramento raised the question as to whether or not this  
3 particular law suit fell under the provisions of that code and  
4 the defense should or should not be raised. And the trial court  
5 decided that there was an obligation on the Senate to comply with  
6 that code section and to defend the law suit, and that was  
7 appealed and the Court of Appeals affirmed it.

8 SENATOR MELLO: On this case?

9 MR. RUSTON: Yes, sir.

10 Therefore, there is a permanent ruling that that  
11 obligation is here. Therefore, there is an obligation and a duty  
12 to defend, and I have been hired to do that.

13 If I go through trial, and I call witnesses, and I have  
14 to bring people back, I'm sure that the trial is going to be  
15 lengthy, and the attorneys' fees, the costs, and all other items  
16 in it will far exceed the \$20,000 that is being offered in  
17 settlement. In fact, I tried to stop that as a settlement early  
18 on, but we haven't succeeded because of various things that have  
19 been happening, and that is the way that I think money would be  
20 saved because I think the settlement that you are paying is less  
21 than the cost of defense.

22 SENATOR MELLO: The courts have decided, then, through  
23 the Appellate Court, that we are responsible for defending this  
24 case and paying in the amount of the settlement?

25 MR. RUSTON: No, they did not say the settlement. It  
26 was the duty to defend.

27 SENATOR MELLO: Oh, duty to defend.  
28



1 MR. RUSTON: That's correct.

2 And I'm suggesting this settlement because the  
3 settlement would be less than I think eventually it's going to  
4 cost to defend the law suit, even if you win.

5 Now, if you lose, it depends upon what happens in making  
6 a determination as to the liability.

7 SENATOR MELLO: So you're suggesting that we approve the  
8 settlement so that further costs will not continue on in  
9 defending Mr. Schmitz in this case.

10 MR. RUSTON: Correct.

11 Also, it extinguishes a potential claim that Brad Evans  
12 has, because he was an employee of the State as well, has been  
13 named as a defendant, has not been appearing, has not had an  
14 attorney. If he gets a judgement against him, and he hasn't been  
15 defended, you have a potential claim there.

16 Part of the settlement is also that he will be dismissed  
17 with prejudice so as to terminate any potential liability or  
18 expense to the Senate or the State of California in that  
19 connection.

20 I've tried to wrap everything up, as Ms. Allred and her  
21 attorneys, so that we'll bring everything to a conclusion in this  
22 matter.

23 SENATOR MELLO: You mentioned some exceptions to this  
24 obligation to defend. Would you mind citing what those  
25 exceptions might be?

26 MR. RUSTON: Basically, the exceptions are that if  
27 something occurred outside, of course, the scope of the  
28



1 employment. Suppose, for instance, Senator Schmitz had not done  
2 this in connection with a Senate hearing, but had simply been at  
3 a private party, nothing connected at all, when he made this  
4 statement, so that it wasn't a part or even alluded to be, or  
5 possibly a part of being and acting as a senator; that would be  
6 one exception.

7           The other one would be where the act is done with actual  
8 malice so as to be an item that would not be covered by the act.  
9 Now in that connection, I will tell you that it is my belief that  
10 Gloria Allred is at least a limited public figure because of the  
11 notoriety, and to make any recovery she would have to prove  
12 malice. I don't think that could be proven. I think there are  
13 other defects in the law suit, but that's getting into the  
14 merits, which we've tried to lay aside simply to conclude the  
15 litigation.

16           I don't think that any of those apply. Until it is  
17 shown that there's malice, then you still have to defend  
18 basically.

19           SENATOR MELLO: The first exception that you listed, the  
20 one that was not part of his official duties.

21           The fact that this took place, you said, before the  
22 Christmas holidays when he issued this press release --

23           MR. RUSTON: It came out from the Senate Committee here  
24 on an official document of the committee. It came out during --

25           CHAIRMAN ROBERTI: Roughly this time of year.

26           MR. RUSTON: Yes, the time of year where they couldn't  
27 reach him for approval.  
28





1 I have, incidentally, an actual copy of the press  
2 release, not the one that was attached to the court document  
3 because we didn't have it at the time, but I have one of those if  
4 you would like to see it, Senator.

5 SENATOR MELLO: No, but I'm trying to see where we are  
6 really liable and responsible, as you're pointing out. I'm still  
7 trying to trace that.

8 You said it happened, the press release happened shortly  
9 before the holidays, and secondly, it was done by this Brad  
10 Evans, a staff person, without the knowledge of Senator Schmitz.

11 MR. RUSTON: Correct.

12 SENATOR MELLO: Taking that into perspective, how can  
13 you trace that back that we become liable for what a staff person  
14 did without the knowledge of the Senator at a time shortly before  
15 Christmas?

16 MR. RUSTON: That's another reason that I think there's  
17 no liability to Senator Schmitz, or former-Senator Schmitz.

18 But the allegations of the Complaint filed by Ms.  
19 Allred, she is contending that Senator Schmitz did in fact  
20 authorize it and caused it to go out. And as long as that  
21 allegation exists, then the duty to defend exists, and it then  
22 becomes a question of fact at the time of trial as to whether or  
23 not she's correct in her allegation, or what I tell is correct.

24 I happen to think that we can prove that what I told you  
25 is correct, and I've indicated to you the witnesses I've  
26 contacted, but that would be one of the issues.

27  
28



1           If in fact he did not publish the statement, which is  
2 one of the key words that they use in these libel actions -- in  
3 other words, he didn't make it but someone else did -- then there  
4 would be no liability to him.

5           There could be to Brad Evans, who is also a defendant in  
6 this matter, because it appears he states that he did issue it.  
7 The problem is that he is presently unrepresented, hasn't been  
8 appearing, and whether he would then make a claim against you or  
9 not I don't know, but in the event that he did, I'm trying to  
10 accomplish the cutting off of that, and it has been agreed by Ms.  
11 Allred and her attorneys that if there is a settlement and if it  
12 goes through, that they will file a dismissal as to Brad Evans as  
13 well, which would extinguish that liability. So, it could be two  
14 ways.

15           Incidentally, Mr. Gregory points something out that I  
16 should point out and that is that Ms. Allred did file before the  
17 State Board of Control a verified claim against Senator Schmitz  
18 on this matter, which is a prerequisite to bringing this action.

19           SENATOR MELLO: Then as I hear your responses to my  
20 questions, I get the feeling that you feel her case is without  
21 merit, but you're recommending that we settle for this \$20,000  
22 instead of facing what might be even be greater costs, not in  
23 paying a settlement but for defending the case.

24           Let me ask you, what do you think it would cost if we  
25 were to defend this case through the process and possible appeal  
26 to another level? What kind of fees are we looking at?



1 MR. RUSTON: With the estimates that I have heard with  
2 regard to the length of time that it would take, and we had  
3 discussions in depth with Judge Leon Savage in that regard, it is  
4 estimated that the case would probably take -- well, depending  
5 upon how long it takes to pick a jury, and whether we can in fact  
6 get a jury or it would be transferred to another location because  
7 of certain issues that are raised regarding press coverage, which  
8 I won't get into, but we had a motion for change of venue which  
9 was denied without prejudice to being renewed at the time of  
10 trial because of certain publicity that was coming out on this.

11 In any event, assuming that there was not that, and  
12 that we could get a jury in a reasonable time, it looked like we  
13 were looking at two weeks or better of trial. That would also  
14 mean transporting of at least two witnesses from Northern  
15 California, the potential of trying to get Mr. Brad Evans to come  
16 out from Indiana and transporting him out here. It would also  
17 mean that we would have probably, that is in my opinion,  
18 regardless of what happened, I think that if we won, it was more  
19 or less agreed that the other side would probably appeal. And I  
20 think that there're enough things that have occurred in this case  
21 that if we were to lose, that there would be an appeal there as  
22 well.

23 If you put the two of those together, I think the cost  
24 of the reporter's transcript, the cost of witnesses, the  
25 attorneys' fees, and everything else, could go as high as  
26 \$50-60,000.





1           SENATOR MELLO: So you're saying it's better to buy out  
2 at 20 than to face the higher cost that might be 50 or 60 or  
3 more?

4           MR. RUSTON: I am, sir.

5           CHAIRMAN ROBERTI: Further questions?

6           Are there any other witnesses in support of the  
7 settlement?

8           Seeing none, the opposition, Ms. Allred and any others  
9 who would like to testify, please come forward.

10          MS. ALLRED: I'd like to introduce the people who are  
11 with me. They'd like to request the opportunity to be heard  
12 after me.

13          MR. TABASH: I'm Edward Tabash. I am the primary  
14 speaker and debater for the California Abortion Rights Action  
15 League. I'm an attorney in private practice in Beverly Hills.

16          MR. COLEMAN: Mr. Chairman, my name is Thomas J.  
17 Coleman, Jr. I'm Director of Legal Services at the Los Angeles  
18 Gay and Lesbian Community Services Center.

19          MS. ALLRED: I'm attorney Gloria Allred. I'm a partner  
20 in the law firm of Allred, Maroko, Goldberg and Ribakoff, a Los  
21 Angeles law firm. I'm the Plaintiff in this law suit.

22          I'd like to, first of all, thank the Committee, Senator  
23 Mello, Senator Doolittle, Senator Roberti, Senator Petris,  
24 Senator Craven, for the opportunity to be heard on this issue and  
25 for taking you time, especially during this holiday period, to  
26 discuss this issue once again.

27  
28



1 I'd like to ask for the opportunity to make a brief  
2 statement, and then I would like to respond to some statements  
3 that Mr. Ruston made, Mr. Gregory made, and also to answer any  
4 questions.

5 I think that a brief history of this matter, although  
6 the Senators know it, a very brief nutshell history ought to be  
7 made for the record.

8 I'm here today to object to efforts to force taxpayers  
9 to pay the price for bigotry. In 1982, I filed this law suit  
10 against then-Senator John Schmitz and his aide, Brad Evans,  
11 because of a press release issued by Schmitz and Evans which  
12 became infamous because it was filled with bigoted and defamatory  
13 statements maligning Jews, women, homosexuals, and myself.

14 After I filed the law suit, the State Senate, in an  
15 action unprecedented in California history, voted on January  
16 28th, 1982, to deplore the press release and disassociate itself  
17 from it.

18 In spite of the Senate's vote, I was dismayed to find  
19 that the Senate Rules Committee had met in Executive Session and,  
20 over my protests, voted to pay for Senator Schmitz's defense,  
21 which I understood to mean his legal fees and costs.

22 On August 21st, 1986, the day set for trial, I  
23 successfully ended the case. Senator Schmitz issued an apology  
24 admitted that the press release was distributed from the State  
25 Senate Constitutional Amendments Committee, which he chaired, and  
26 that it contained language that, and these are Senator Schmitz's  
27 words in the apology, quote, "should not have been stated", end  
28



1 quote, and was, quote, "wrongfully included", end quote. He also  
2 admitted that he stood behind the statement, which I consider  
3 ratification of the statement.

4 In addition to the apology, Schmitz agreed to pay  
5 \$20,000. Today the Senate Rules Committee has the opportunity to  
6 decide whether Senator Schmitz or the taxpayers should be forced  
7 to pay for the cost of the settlement.

8 I believe that it's essential that this important  
9 decision be made, as it is here today, at a public hearing. And  
10 I thank the Committee for not having a secret, closed-door  
11 session on this matter.

12 It's my position that the Committee should vote against  
13 the use of taxpayers' funds to pay for Senator Schmitz's  
14 settlement. Forcing the taxpayers to pay it in this case would  
15 constitute a State subsidy for bigotry. I believe there is no  
16 legal or moral reason why we should be forced to subsidize the  
17 defense of what the Senate has deplored and what conscience must  
18 condemn.

19 It would be hypocritical to vote to economically  
20 insulate Senator Schmitz from the cost of his wrongful acts after  
21 the full Senate voted to deplore them, and such a vote could only  
22 serve to encourage other Senators in the future to defame other  
23 members of the public who testify at Senate hearings, because it  
24 would send a message to these Senators that they will never have  
25 to pay the price for their deplorable and wrongful acts. Instead  
26 the taxpayers will get the bill.

27

28





1 A vote to pay the settlement would be an insult to  
2 taxpayers, and it would constitute State support of bigotry.

3 If not in the case of Schmitz, then with whom shall we  
4 take such a stand? And if not now, when?

5 I would like to address a few of the points that Mr.  
6 Ruston made.

7 Mr. Ruston is correct in saying that the settlement was  
8 for \$20,000 and an apology, and that that was entered into before  
9 Judge Savage.

10 However, I am concerned that Mr. Ruston was talking  
11 about his discussion with certain individuals, whom he did not  
12 identify, and I don't know who he's talking about. The only  
13 depositions that I am aware of that were taken in the case were  
14 those of Brad Evans and Senator Schmitz. And I don't know if Mr.  
15 Ruston is trying to say that other depositions were taken of  
16 which I am not aware. I think that certainly would be strange,  
17 since I'm the Plaintiff and should certainly have received notice  
18 if other depositions were taken.

19 But I choose to limit myself to the evidence in this  
20 case, as I think is appropriate to do, the evidence of the  
21 depositions of Brad Evans and Senator Schmitz, and not some  
22 hearsay upon hearsay of unnamed, unidentified individuals who are  
23 not present to be examined in any way by the Members of this  
24 Committee.

25 In any case, what the evidence shows is what Brad Evans  
26 testified to and what Senator Schmitz testified to. And I think  
27 that that is what is really important.  
28



1 I have brought with me, and I think I've also provided  
2 it in the past to the Members of this Committee, I've brought  
3 with me what Brad Evans said. Now, keeping in mind that Brad  
4 Evans was a loyal aide to Senator Schmitz, as trusted as many of  
5 you have trusted aides. This is what came from a loyal aide  
6 under penalty of perjury telling the truth as he recollected it  
7 as to what happened. And this goes to the point of whether  
8 Senator Schmitz was responsible for what happened; whether he was  
9 liable in a legal sense.

10 He said, and I'm quoting from Brad Evans' deposition on  
11 Page 106, Line 5, referring to Schmitz, Brad Evans says:

12 "... 'I think we need to get out a  
13 press release. We need to get out a  
14 real strong press release and blast  
15 these people that showed up and stole  
16 all our media coverage from us. We need  
17 to blast Gloria Allred and we need to  
18 blast the witnesses who were opposed to  
19 the position and who had angered him, in  
20 fact.'

21 "So I said okay.

22 "So I wrote the press release and  
23 it was strong and it blasted them as he  
24 told me."

25 And then he goes on at Line 15 and 16 saying:

26 "... it was somebody from the Orange  
27 County Register who called him and said,  
28 'Is this press release for real?'"



1 Meaning he called Senator Schmitz. And he said:

2 "Well, I don't know. You'd better read  
3 it to me and I'll tell you."

4 So they read it to him and he said, quote:

5 "Well, that's accurate, and I stand  
6 behind it."

7 End quote, but admitted to the reporter that he hadn't seen it.

8 So, he said, Brad Evans said, that Schmitz stood behind  
9 it, and of course Schmitz, in his Apology, admits that he stood  
10 behind it. So that's ratification.

11 I don't think we need to get into the niceties of  
12 whether it was authorized in advance or not, because we've got  
13 ratification afterwards. As we all know, that's just as good as  
14 prior authorization.

15 CHAIRMAN ROBERTI: Just a question. Can you, in your  
16 knowledge of the law, can you ratify on the issue of malice?

17 MS. ALLRED: It would be my opinion that you could  
18 simply because malice, the generally acceptable definition of  
19 malice, would be with knowledge that it was false or with  
20 reckless disregard of its truth or falsity.

21 I will get, a little bit later, to the point that  
22 certainly Senator Schmitz had knowledge that what he said, at  
23 least about me, was false. And so if he had that knowledge,  
24 because he does say in his Apology that he knows that I'm not and  
25 haven't been, and he's never considered me to be a slick butch  
26 lawyeress. So if he never considered me to be a slick butch  
27 lawyeress, but then ratified and said to the reporter: I stand  
28





1 behind it. Meaning a statement which said I was a slick butch  
2 lawyeress, to me that's reckless disregard, or better yet, actual  
3 knowledge that what was being ratified was false.

4 So to me there was malice. This is not analogous to an  
5 automobile accident. Somebody gets into an accident; it's an  
6 accident. Nobody intended it. This was intentional.

7 So going on -- I hope that answered the question, Mr.  
8 Chairperson.

9 So on Line 23, again, the same page, 106, Brad Evans  
10 says:

11 "So it was a matter of timing. He  
12 wanted it out immediately. I wrote it  
13 and I got it out immediately. He wanted  
14 me to blast them; I blasted them."

15 That's Line 25. And going to Page 107, same depo, Line 7, Evans  
16 testifies:

17 "He agreed with all the statements."

18 And on Line 17, same page, Evans says -- there was a question to  
19 Evans by my attorney, Mr. O'Reilly, who was my attorney at that  
20 time, saying:

21 "And when you were drafting, when you  
22 were drafting it for release, you were  
23 aware that the press release would be  
24 attributed to Senator Schmitz?"

25 ANSWER: "That's right."

26 QUESTION: "... from your knowledge of  
27 Senator Schmitz, he essentially agreed  
28 -- with?



1 "Would that be a fair statement?"

2 ANSWER: "Yes, that is a fair statement."

3 And then another answer on Page 108:

4 "Yeah, he said to get it out right  
5 away."

6 And Line 9:

7 "I had released others on my own auth-  
8 ority and he told me to blast them, so  
9 I took it on myself to release the thing."

10 And on Page 109, Line 19:

11 "And ... he said that the Orange County  
12 Register reporter had gone through it  
13 paragraph by paragraph, and after each  
14 paragraph he said,"

15 meaning Senator Schmitz,

16 "'That sounds accurate.' And then at  
17 the end he said, 'I stand behind it.'"

18 And again on Page 111, this is a question:

19 "And was the reason ... you mentioned  
20 Gloria Allred by name in the press  
21 release, was that because of his  
22 direction to you to blast Gloria Allred  
23 in the press release?"

24 ANSWER: "Yes."

25 QUESTION: "And you were aware as you were  
26 drafting the press release that she was  
27 the only person that was mentioned by  
28



1 name in it?"

2 ANSWER: "Yes."

3 QUESTION: "And that was to highlight her  
4 to conform with Senator Schmitz's wishes  
5 that she be blasted in the press release?"

6 ANSWER "Yes."

7 QUESTION: "Okay."

8 ANSWER: "Because of what had hap-  
9 pened in Los Angeles."

10 Referring to the hearing,

11 ANSWER: "Because ... what had happened in  
12 Los Angeles."

13 QUESTION: "... and when he told you to  
14 prepare, he told you how angry he was  
15 over Gloria Allred?"

16 ANSWER: "He said, 'I can't believe this.  
17 We ... heard 180 witnesses and the only  
18 damn thing you see in the Los Angeles  
19 Times or on TV is Gloria Allred.'"

20 And so on.

21 By the way, Senator Roberti, I don't know if you've had  
22 an opportunity to see this part of the depo, but it might be of  
23 interest to you that on Page 131, Line 17, the question is:

24 "And what other cities or area were you  
25 referring to when you mentioned, quotes,  
26 'other centers of decadence', close  
27 quote?"  
28





1           ANSWER: "Senator Roberti's district,  
2           which is largely homosexual, at least  
3           according to him."

4           CHAIRMAN ROBERTI: It's a little off.

5           MS. ALLRED: As to the motivation of Senator Schmitz,  
6           which I think that this Committee might be interested in, as to  
7           Brad Evans, on Page 138, Line 26 and 27, talking about the  
8           purposes of issuing the statement, press release, said:

9           ANSWER: "Yeah, stigmatize, of course,  
10          is sort of a broad word. It was to  
11          stigmatize them ..."

12         meaning the witnesses.

13          "... for reasons that we considered to  
14          be good."

15         Now here's the real reason:

16          "It was also to attack them, just as a  
17          plain political attack."

18         I won't go on to how he knows whether a woman -- well, how he  
19         knew that some of the women in there were Jewish. Maybe I will  
20         just briefly. He says,

21          QUESTION: "Can you tell us what that  
22          is, your conception of what a Jewish  
23          woman looks like?"

24          ANSWER: "Well, Semetic, dark hair, pro-  
25          minent nose in most cases, general skin  
26          tone of a Mediterranean character."

27         And of course he adds later:  
28



1 "Well-dressed, of course ...."

2 This is why I tried to wear appropriate attire today.

3 In any event, later, after the slick butch lawyeress  
4 phrase, he said, on Page 147, Line 18:

5 "That was descriptive -- in the con-  
6 text of this, this is all entirely  
7 critical ...."

8 In other words, it was meant to be critical.

9 "... so in that sense, slick butch  
10 lawyeress was meant as a critical  
11 phrase, obviously."

12 And the question was:

13 "At that time when you used the word  
14 'butch' ..."

15 Page 148,

16 "... did you intend that there be any in-  
17 nuendo with respect to lesbianism?"

18 ANSWER: "Honestly, of course in the  
19 context of the rest of the press release,  
20 it would have carried over from the  
21 bulldykes business. But standing by  
22 itself, 'slick butch lawyeress' stands  
23 by itself."

24 In any event, they go on to talk about -- the question was:

25 "... from your ... vast experience that  
26 you had in dealing with media, dealing  
27 with the press, and drafting press re-  
28



1 leases, you were aware when you were  
2 drafting this press release that your  
3 views of the word 'butch' with respect  
4 to Gloria Allred in the context of this  
5 press release entitled 'Senator Schmitz  
6 and His Committee Survived the "Attack of  
7 the Bulldykes"', would to many people  
8 mean that Gloria Allred was a masculine  
9 lesbian?"

10 And the answer is -- and the question was:

11 "Would that be a fair statement?"

12 ANSWER: "I was aware that that construc-  
13 tion could be put on it. I don't know  
14 about many people. I was aware that  
15 that construction could be put on it."

16 And then he goes on about Jewish faces, about what was meant.

17 The question was:

18 "What did you mean by that statement,  
19 'a sea of hard Jewish and (arguably)  
20 female faces'?"

21 ANSWER: "Exactly what it says. They  
22 were hard faces; they were mean faces;  
23 they were Jewish faces."

24 And so on.

25 Finally, there are other statements as to why Senator  
26 Schmitz's name was on it. The question was:





1 "And would that be the same reason you  
2 put at the top of the statement -- that  
3 it is the statement of Senator Schmitz,  
4 because he directed you to --"

5 ANSWER: "'Statement of Senator John  
6 Schmitz, Chairman.' That's what he  
7 wanted, the Chairman statement."

8 And then, when he was asked about whether I had any  
9 children or my marital status, on Page 167, he said that he was  
10 not aware of it, of my marital status. But Senator Schmitz later  
11 stated that of course he was aware of my marital status and my  
12 daughter.

13 As to some of the statements made by Mr. Ruston, that  
14 the Apology contains nothing regarding that Senator Schmitz knew  
15 that it was going out, you know, the Apology does not contain  
16 everything in the world that could have been said, that would  
17 have been said had I been trying to have three volumes of the  
18 statement.

19 It does contain what I believe to be essentials of an  
20 apology, and that statement that he stood behind it as an  
21 admission of Senator Schmitz, I felt, was absolutely essential,  
22 and it is in there. That's the ratification, and that's what I  
23 hope that you would all one day, sitting here in the Senate Rules  
24 Committee trying to decide this very important issue, and it's  
25 there.

26 I think we have sufficient testimony which I've read  
27 from Brad Evans regarding prior authorization.  
28



1           Regarding, Senator Roberti, your question to Mr. Gregory  
2 about what would happen if the Rules Committee today chose the  
3 option of not approving the settlement, what would happen. And  
4 Mr. Ruston said: Well, we'd have to go back before the judge.

5           I can't agree with that. I don't see why we'd have to  
6 go back before the judge at all, because the transcript of what  
7 went on before the judge at the day -- on the day that the  
8 settlement was announced doesn't say anything about: Well, we  
9 have to go back before the judge if the Senate Rules Committee or  
10 the Senate doesn't choose to pay the cost of the settlement.

11           To the contrary, it doesn't say anything about the  
12 Senate being liable, or the taxpayers being liable whatsoever,  
13 and that is not a coincidence. It has been my position from the  
14 beginning that we should never accept one cent of taxpayer funds,  
15 and I don't wish to do that.

16           In fact, the wording on Page 3 of the transcript of that  
17 day says:

18                   "The case has been settled in the fol-  
19                   lowing manner: In consideration of the  
20                   agreement ..."

21           This is by the judge,

22                   "... of apology by John Schmitz, which  
23                   I will read, and the payment of the sum  
24                   of \$20,000 to the Plaintiff, Gloria  
25                   Allred by and/or through the Defendant,  
26                   the Plaintiff Gloria Allred dismisses  
27                   this action."  
28



1 And it goes on. It's by or through the Defendant. Who were the  
2 Defendants?

3 I think that Senator Mello had a good point earlier.  
4 The Senate was never a Defendant. I never sued the Senate. The  
5 Senate is not a Defendant. The only Defendants were Brad Evans  
6 and John Schmitz. They're the only ones who are liable for this  
7 settlement.

8 What I propose to the learned Senators present here  
9 today is, just leave it alone. Don't pay. Don't vote to pay the  
10 settlement. I will go after Senator Schmitz and perhaps Brad  
11 Evans. I will take the risk of their not having one cent to pay  
12 in the way of settlement. I will be happy to take the risk. It  
13 is a risk which I assumed all along.

14 SENATOR CRAVEN: Mr. Chairman.

15 CHAIRMAN ROBERTI: Senator Craven.

16 SENATOR CRAVEN: If I may interrupt, Ms. Allred.

17 How would you define the statement made by the judge,  
18 quote, "by and/or through the Defendant," end quote?

19 MS. ALLRED: How would I define that?

20 SENATOR CRAVEN: Yes. What does that mean to you?

21 MS. ALLRED: That means that the \$20,000 comes to me  
22 from the Defendant or through the Defendant. It is of no concern  
23 to me whether he gets it from the woman in the moon or, you know,  
24 the person who was standing on the street corner. If they wish  
25 to make a donation, fine. But it's from Senator Schmitz to me,  
26 not from anyone else.





1 I don't want checks from anyone else. You know, I'm not  
2 standing there with a cup in my hand. I have a judgment; it's  
3 against Senator Schmitz. That's who it's supposed to come from.  
4 That's the way I interpret it.

5 SENATOR CRAVEN: Well, I would interpret it a little  
6 differently than you. When the term "by" is used, I would say  
7 that would be personal from Senator Schmitz by Senator Schmitz.  
8 In other words, he would execute an order to pay you that amount  
9 of money.

10 But "through" Senator Schmitz, I look at that a little  
11 differently, I think, than you do, because I would think that  
12 through whatever agency he may employ to deliver that money to  
13 you would be through Senator Schmitz.

14 MS. ALLRED: I don't know if his intentions are to go to  
15 the John Birch Society or whatever. I don't know.

16 SENATOR CRAVEN: Right, exactly. I think his intentions  
17 are to go to the Senate Rules Committee.

18 MS. ALLRED: That's between him and the Senate Rules  
19 Committee, then, or him and whomever he wishes to approach for  
20 the funds.

21 I mean, it's not as between me and Senator Schmitz.  
22 That's all I'm talking about, is the check come from Senator  
23 Schmitz.

24 SENATOR CRAVEN: I understand, I think, most of what  
25 you've said. And I can understand why you are perturbed, to say  
26 the very least.

27

28



1 But that is basically something that at this time has  
2 been adjudicated. In other words, that's passed. You've gotten  
3 your apology, which I think is perhaps a victory of sorts,  
4 although it may not be exactly what you had intended, but you had  
5 agreed to that and that has been done. A term or an amount of  
6 settlement was reached.

7 Is it your thought or hope, desire, that in the payment  
8 of that money to you as the judgment that the money must come  
9 personally from Senator Schmitz?

10 MS. ALLRED: I would like it to come personally from  
11 Senator Schmitz; that's correct, sir.

12 SENATOR CRAVEN: And this is just the hypothesis, if we  
13 today said: Let's get \$20,000 and give it to Ms. Allred, you  
14 would have objection to that?

15 MS. ALLRED: Yes, I would. I don't wish the people of  
16 California to send me a check, no.

17 SENATOR CRAVEN: What would be the nature, just saying:  
18 Forget it? Or what would you do at that juncture if we decided  
19 to do that?

20 MS. ALLRED: I would have to explore that further. I  
21 would have to explore why a gift of taxpayer funds is being made.  
22 I know there are lots of needy causes out there, but you know,  
23 why I should be considered so deserving when I have not sought  
24 it, and to the contrary, have protested receiving such a gift,  
25 and I might add the word is gift. This is not an obligation. I  
26 don't think the Committee --  
27  
28



1           SENATOR CRAVEN: But you would stipulate that the  
2 original defense was an obligation.

3           MS. ALLRED: Pardon me?

4           SENATOR CRAVEN: But you would stipulate that the  
5 original defense was an obligation.

6           MS. ALLRED: No, I would not, sir.

7           SENATOR CRAVEN: So you didn't agree with that either?

8           MS. ALLRED: No, I have always objected to paying --

9           SENATOR CRAVEN: Was that a gift of public funds?

10          MS. ALLRED: I think it was a very unwise gift of public  
11 funds.

12          SENATOR CRAVEN: Do you want to answer my question?

13          MS. ALLRED: I think that the Committee exercised its  
14 discretion and did not have a public hearing, and therefore  
15 didn't have the benefit of the many people who could have advised  
16 the Committee about the very many exceptions, which I'd be happy  
17 to address, but three having to do with malice, scope, and  
18 conflicts. But all of which I think that this case falls within,  
19 could have found an exception in 995 and didn't, and now could  
20 based on the new facts that I'm bringing to your attention today  
21 through the depositions.

22          SENATOR CRAVEN: Of course --

23          MS. ALLRED: I distinguish that too, sir. That even if  
24 you could have made that allocation of funds for the defense,  
25 that does not necessarily bind you to make an allocation of funds  
26 for a settlement.

27

28





1           SENATOR CRAVEN: You're probably correct there. But as  
2 dutiful clients, and you deal with clients, some of whom are  
3 dutiful and others are somewhat errant, we followed the advice of  
4 our attorney in doing what we did. We didn't do it capriciously,  
5 and we didn't do it without some soul searching. We did it  
6 because that was the advice.

7           Any client who really doesn't follow the advice of their  
8 attorney really shouldn't even be involved with an attorney. In  
9 other words, that's what attorneys are for. They know the answer  
10 to those things, or at least you hope that they do. We did that  
11 based on that thought.

12           The point that I'm getting to is, where is the line of  
13 delineation or demarkation between what we did initially and what  
14 we may propose to do at this juncture?

15           MS. ALLRED: In order to answer that question, one of  
16 the questions I would have to know the answer to is, did you  
17 decide to provide for the defense with a reservation of rights as  
18 to the settlement?

19           SENATOR CRAVEN: I'll ask the Chairman to respond to  
20 that.

21           CHAIRMAN ROBERTI: When the original defense issue came  
22 up, I don't think we discussed the question of settlement.

23           SENATOR CRAVEN: That was my thought also, Mr. Chairman,  
24 but I wanted you to make that statement.

25           CHAIRMAN ROBERTI: It was quite some time ago, but  
26 that's my very best recollection, and I think I'm correct.  
27  
28



1 MS. ALLRED: Perhaps Mr. Gregory could tell us the  
2 answer to that question, because even in his initial analysis of  
3 this issue for the Committee, which I have here, from February  
4 10th, 1982, he states on the last page that -- he talks about  
5 reservation of rights. He says:

6 "The reservation of rights is the  
7 Senate's right not to pay the judgement,  
8 compromise, or settlement until it is  
9 established that the injury arose out  
10 of an act occurring within the scope of  
11 Senator Schmitz's employment as an em-  
12 ployee of the Senate."

13 So this analysis, I think, clearly distinguishes that it  
14 could be that the Senate Rules Committee votes to pay for the  
15 defense, but reserves the right not to pay for the settlement.

16 Of course, I've never seen the contract, so I really  
17 don't know the answer to that. And since it was done in  
18 Executive Session, I'm not sure that anyone but perhaps Mr.  
19 Gregory, Mr. Ruston, or the Committee may know the answer to  
20 that.

21 But I think it's clear that it wouldn't have to  
22 necessarily follow that you pay for the settlement.

23 SENATOR CRAVEN: Yes, I would agree with that. I don't  
24 disagree with that.

25 MS. ALLRED: And of course, as to your other point,  
26 Senator Craven, you know, I know that we -- I'm an attorney, and  
27 I like to think that I have a lot of the answers for my clients.  
28



1 But I know that all of us who are good attorneys encourage our  
2 clients to ask hard questions. And if they think that there's  
3 something that we're telling them that perhaps could go either  
4 way, you know, we're an advocate but certainly there's another  
5 side to it, we should ask those questions. And we wouldn't want  
6 to follow blindly, of course, if our attorneys were to tell us --  
7 and I know Mr. Ruston wouldn't ever do such a thing -- but if our  
8 attorneys were to say: Okay, you're my client; go jump off of a  
9 cliff. I'm sure we wouldn't say: You're my attorney; of course  
10 I'll do it.

11 So, I mean, in think in this case you're being asked to  
12 jump off a very high cliff, and I would hope that you wouldn't  
13 go.

14 As to going back before the judge, I respectfully  
15 disagree. I don't see any going back before the judge because  
16 the Senate doesn't pay.

17 The Senate was never represented by an attorney in this  
18 proceedings as far as I know. Mr. Ruston always said to me that  
19 he was the attorney for Senator Schmitz. In fact, as I was  
20 taking some notes here before, I heard him identify himself to  
21 this Committee as the attorney for Senator Schmitz. He didn't  
22 say he was the attorney for the Senate Rules Committee or the  
23 Senate.

24 So, you mean to tell me that the Senate could be bound  
25 by a settlement in a court of law not having had an attorney  
26 present? Not having been a Defendant? Not having had an  
27 opportunity to be heard?  
28





1 I think that that would be a total violation of due  
2 process, to think that you could be bound by something that  
3 happened in some stranger's law suit where you weren't  
4 represented at all.

5 SENATOR CRAVEN: I don't know that we're going to  
6 disagree with you on that point, because really, really we're at  
7 that point now where we have to make the determination whether  
8 there was any implied binding of us really. Throughout the  
9 course of this litigation the attorney for Senator Schmitz has  
10 operated as Senator Schmitz's attorney and not for the Senate  
11 Rules Committee.

12 MS. ALLRED: Right.

13 SENATOR CRAVEN: You're absolutely right.

14 We caused it to happen, but we sort of did a Pontius  
15 Pilate at that time and washed our hands of the whole matter and  
16 said: Okay, you handle it from here. And that's exactly, I'm  
17 sure, what he did, and I'm confident he did it very competently.

18 SENATOR PETRIS: Mr. Chairman.

19 CHAIRMAN ROBERTI: Senator Petris.

20 SENATOR PETRIS: It's obvious that Ms. Allred is a good  
21 lawyer.

22 MS. ALLRED: Thank you. I think you are, too, Senator.

23 SENATOR PETRIS: Thank you.

24 I don't think the case where we have to make a decision  
25 turns 100 percent on the law. There are two things here as I see  
26 them.

27

28



1           One, we appointed Mr. Ruston to represent Mr. Schmitz,  
2 and the fee is paid by us. So, it's not like there's no  
3 connection here at all.

4           It's kind of like an insurance company defense. A sues  
5 B in an automobile accident. What's the insurance company doing  
6 with that? They're not even a party. And if the fact that  
7 they're in the picture is even mentioned, it's grounds for  
8 mistrial, as you know, in a personal injury case.

9           It's a fiction that the law has developed over a period  
10 of time in the interests of fairness.

11          I'm not saying the analogy is 100 percent, but we're  
12 kind of in a similar situation. We're the real party in interest  
13 to some extent.

14          And having been there, and having decided to tend to the  
15 defense, and having been supported in that by the Appellate  
16 Court, we get to the second point, which is an economic question.  
17 And I think it turns on that as much as anything else.

18          When we're confronted with some options, and what the  
19 costs of those options are, we elect to cut the losses, there's  
20 an opportunity to do it, and that's why Mr. Gregory was pretty  
21 active in this. He didn't negotiate with you face-to-face, but  
22 he was on the phone with Mr. Ruston all the way through. And the  
23 settlement would not have taken place if it didn't get our  
24 approval.

25          Now, I don't know how much of that is known to you or  
26 the Court at the time. I understand the judge knew. Why it  
27 didn't go on the record, there's probably some good reasons for  
28



1 it; it may be political; it may be legal; it may be practical. I  
2 don't know.

3 But I would respectfully suggest that, number one, I  
4 think you've done a great public service in filing your law suit.

5 Number two, I think if you took these other things into  
6 consideration, which have the foundation of legal advice, I don't  
7 think our position in having a motion to pay for this is that  
8 unreasonable.

9 Let me add from the standpoint of precedent, I was sued  
10 once, and that may color my outlook on this case. I was sued by  
11 some people in L.A. in the federal court for about 10 or 20  
12 million dollars for voting for a bill, and I think I was a  
13 coauthor, in favor of gun control.

14 And these people filed this whopping law suit, which  
15 really jolted me when I was served with the papers. And the  
16 authorities cited by the Plaintiffs were primarily scriptural.  
17 They were citing the Bible and certain sections of the U.S.  
18 Constitution on their fundamental right. And here I am as a  
19 legislator, acting in the course and scope of my duty, climbing  
20 all over their rights to own these weapons.

21 Well, that was handled, I think, by the Attorney General  
22 because of other Defendants that were involved as well. I'm not  
23 sure what the reason was.

24 That case was ultimately dismissed, but it cost the  
25 people a considerable amount of money up to that point. It  
26 finally was dismissed, and that was the end of it.

27  
28





1           So, there was a certain expense there. I doubt that it  
2 would have been settled. But if it had been settled, I would  
3 have approved, with my one vote, a nuisance value type of thing.

4           Now, this isn't a nuisance value. It's a lot more than  
5 nuisance because that's a lot of money, I think, compared to what  
6 we normally call a nuisance settlement.

7           I think the bottom line is, here we are. We're faced  
8 with this situation. There is an opportunity to settle it. We  
9 have tendered the defense, so I think it's a question of  
10 comparing the amount agreed upon versus the amount that we would  
11 have had to expend to complete our original commitment.

12           I think you'll have to agree at that point we couldn't  
13 back off and say: Well, you go ahead and try the case, but we're  
14 not going to have anything more to do with it. We would still  
15 continue to engage counsel to do it. And our own counsel would  
16 have expended a considerable amount of his time, which means  
17 State time and State money inevitably, without actually  
18 participating in the trial itself.

19           So these are considerations that I would submit to you  
20 without trying to argue against some of the legal points you've  
21 made.

22           I think our position is based on a combination of legal  
23 points and practical considerations, and precedents that we've  
24 had before. We had the Briggs case, in which a person was killed  
25 in San Francisco. The family of the victim, as I remember, sued  
26 John Briggs, who made some inflammatory statements, they claimed,  
27 in San Francisco against certain persons, a certain class in our  
28 society. And they were set upon, and one of them was killed.



1 Now, they attributed that to him. He was sued. We felt  
2 at that time -- I don't remember who was on the Committee or who  
3 our counsel was. It was prior to Mr. Gregory's time, I think

4 Your time? Okay.

5 Didn't we tender a defense in that one?

6 MR. GREGORY: Yes, sir.

7 SENATOR PETRIS: Under this same ruling; wasn't it? I  
8 mean, under the same statute?

9 MR. GREGORY: Yes.

10 SENATOR PETRIS: Now, the final point I'd like to make  
11 is that none of us became cheerleaders for Mr. Briggs at that  
12 time, any more than we became cheerleaders for Mr. Schmitz on  
13 this one.

14 CHAIRMAN ROBERTI: Along the lines that you're speaking  
15 of, Senator Petris, and I know Ms. Allred's taking notes so I  
16 might continue on your frame of reference.

17 My feelings on the technical or legal points of the  
18 matter or mixed.

19 On the one hand, not so very long ago I was sued for one  
20 million dollars by Lester O'Shea. Mr. O'Shea printed a book, or  
21 published a book, in which the comment about Jews, Blacks, other  
22 minorities, and homosexuals was as bad or, in my very humble  
23 estimation, if not worse than the comments directed at you and  
24 others, I guess five years ago.

25 He was an appointee to the Little Hoover Commission by  
26 Governor Deukmejian.

27  
28



1           If I had to defend on my own, there's a strong chance  
2 that Mr. O'Shea's remarks would have gone unchallenged simply  
3 because my own resources were not comparable to Mr. O'Shea's,  
4 who's a millionaire, and I'm not. That's one feeling I have on  
5 the issue.

6           It's complicated a little bit by the fact that what's  
7 before us is not the issue of legal fees. What is before us is  
8 the question of a settlement, and that takes us a degree much  
9 further.

10           I have been of the opinion, and my own case strongly  
11 reinforces it, that we are, absent the tangible showing of  
12 malice, obligated to pay legal fees.

13           Settlements are of a different nature, even though the  
14 amount of money is quite less, or might be less than the costs of  
15 legal fees, and that's, I gather, an arguable point between our  
16 counsel and Ms. Allred.

17           So those are my two points on the matter.

18           On the formal vote before us, I might as well tell the  
19 Members of the Committee and the witnesses that I intend to  
20 abstain. That's what I did in my own case, and I do not want to  
21 be in a position too far different in somebody else's law suit as  
22 I was in voting on my own.

23           Ms. Allred.

24           MS. ALLRED: Thank you. Just a couple things that  
25 Senator Petris brought up that I would like to address when he  
26 comes back into the room, because I think that there are  
27 important points to all of this.

28





1 I want to emphasize that what I think Senator Roberti  
2 just said is very important, the difference between the  
3 settlement and the legal fees.

4 I wanted to emphasize that in that court case that's  
5 been referred to, that was about the legal fees. There was no  
6 settlement at that time. So I think it would be a mistake to  
7 think that that court case mandates that you do anything in the  
8 way of settlement. That's not my interpretation of it.

9 Now, as to the three exceptions on 995, I think that the  
10 exceptions are very important because the first one is the act or  
11 omission was not within the scope of his employment. And this is  
12 as to the defense.

13 I just don't think that libel is within the scope. Is  
14 everything within the scope of employment that a Senator does?  
15 Is murder within the scope employment?

16 I mean, I don't think you would -- I know you wouldn't  
17 give a license to murder, or pay the cost of a settlement for  
18 murder, would you, if a Senator did it? I hope not. I don't  
19 think the case has ever arisen, but I would hope not.

20 Well, if you're not willing to grant a license to murder  
21 because someone wears a Senator's hat, then why would you grant a  
22 license to libel?

23 I think that voting yes has to be a yes to a license to  
24 libel.

25 Now as to the second exception, you don't have to pay  
26 the cost of defense if there has been actual malice; as I said  
27 earlier, knowledge that it was false or reckless disregard, I  
28 think, would be actual malice.



1 Schmitz in his Apology said that he never considered me  
2 to be, and recognized that I am not, a slick butch lawyeress. So  
3 why he would stand behind a statement like that if there was not  
4 malice, I don't know. I think you could find yourself within the  
5 malice exception very easily, since he admitted standing behind  
6 it.

7 And as to the third exception, a conflict of interest,  
8 it says:

9 "A defense of the action or proceeding  
10 in the public entity would create a con-  
11 flict of interest between the public  
12 entity and the employee or former em-  
13 ployee."

14 Then you wouldn't have to pay if there were conflicts.

15 I think you have a conflict because you passed the  
16 Senate Resolution deploring and disassociating yourself from  
17 that. Therefore, I think the Senate Rules Committee has a  
18 conflict.

19 Now, I'm aware that Senator Doolittle voted no on the  
20 Senate Resolution. I'm aware that Senator Craven voted no on the  
21 Senate Resolution. But Senator Roberti voted yes, and Senator  
22 Petris voted yes. Senator Mello for some reason didn't vote.  
23 I'm not sure what that was that day.

24 But I might add that I'm sure you all would like to be  
25 bound by, you know, the will of the Senate. Win or lose, they're  
26 all good sports. And that was the will of the Senate Resolution  
27 29, I think it was, to disassociate and deplore.  
28



1           So, I think there's a conflict if you disassociate and  
2 deplore, and then come back in and pay for the wrongful acts.

3           Finally, I think a statement was made earlier in answer  
4 to a question by Senator Mello to Mr. Ruston that -- or it was a  
5 statement made by someone, that if he didn't authorize the  
6 statement, meaning Schmitz, there would be no liability to  
7 Schmitz.

8           I couldn't agree with that assumption. I mean, I think  
9 we have evidence that he authorized it. But if he didn't  
10 authorize it, then he ratified it, and he said in his Apology he  
11 stood behind it. So I think there would be liability if he stood  
12 behind it. In fact, I'm certain of it.

13           As to whether it would be a two-week trial, or how long  
14 it would be, it's hard to say how long it would be. I don't  
15 anticipate a trial.

16           I anticipate going after Senator Schmitz. If I get the  
17 money, I get the money. And if I don't get the money, I'll  
18 pursue him for as long as it takes to get the money from him.

19           I can assure this Committee that if it votes not to  
20 assist Senator Schmitz with the \$20,000 settlement, that I will  
21 not proceed in a court of law against this Committee, or the  
22 Senate, or any governmental entity whatsoever to collect  
23 anything. Indeed, I don't believe that I have any right to do  
24 it. So, I'm waiving something I don't even think I have a right  
25 to waive. I have no right in the first place.

26           But I can assure you that if I never collect it, that's  
27 -- you're not going to be the ones that have to suffer.

28





1 SENATOR MELLO: Mr. Chairman, on that point.

2 CHAIRMAN ROBERTI: Senator Mello.

3 SENATOR MELLO: I'm impressed with your statement that  
4 you're not going to try to pursue any action against the Senate  
5 Rules Committee.

6 I think we're looking out for the taxpayers, just like  
7 you are.

8 In order for that not to happen, to put it into a legal  
9 sense, would you be willing to sign a release, releasing the  
10 State of California, the California State Senate and the Rules  
11 Committee for any damages or actions that we may be liable for,  
12 either in the defense of Senator Schmitz or Brad Evans, and give  
13 us a clear, outright release, unconditional release from any  
14 claims or damages?

15 MS. ALLRED: Sir, I believe that I have done that all  
16 ready. In the settlement that was made that day, which was read  
17 in court by the judge, it says that in return for the settlement,  
18 which I oppose, I will dismiss this action with prejudice against  
19 all Defendants, including John Schmitz and Brad Evans, and will  
20 execute with all the parties, together with all the parties,  
21 mutual release of all claims of any type, kind or nature in  
22 connection with or concerning the subjective matter of litigation  
23 against all Defendants.

24 And then I also, you know, really give up any right  
25 against, if I had any, against any representative in any  
26 governmental entity, governmental body, governmental committees,  
27 subdivision, office, agent or employee thereof, and so on.  
28



1 SENATOR MELLO: But that's --

2 MS. ALLRED: I will be happy also to sign.

3 SENATOR MELLO: In addition to all that, I'm not an  
4 attorney. Senator Craven and I are the two non-attorneys.

5 MS. ALLRED: I believe I have no rights against the  
6 governmental entity, but if the Committee would like me to sign  
7 such a document, I would be happy to sign a document saying that  
8 I would -- that I have no rights; or if I did have any rights,  
9 that I would waive them, and I will not pursue them, or in any  
10 other language that we all agree is appropriate. Yes, sir.

11 SENATOR MELLO: If I may ask Mr. Gregory a question to  
12 respond to that.

13 If such a release were made to the State as suggested by  
14 myself, would former-Senator Schmitz have a right to bring any  
15 action against us for our obligation to defend him in such a  
16 case? If we were to be a party to being released from this case?

17 CHAIRMAN ROBERTI: Come on forward, Mr. Gregory, so the  
18 reporter can record your remarks.

19 MR. GREGORY: As long as Senator Schmitz assigned the  
20 settlement or the matter went to trial or judgement, and the  
21 judgement was against Senator Schmitz in the amount, and the  
22 Defendant then paid that amount to the Plaintiff, he would then  
23 have a right against the Committee, which would not be capable of  
24 being waived by the Plaintiff. She cannot waive the rights of  
25 Senator Schmitz to recover the amount of the judgement.

26 MS. ALLRED: May I answer that with my opinion as well  
27 on the same question?  
28



1 I do not believe that you have any duty, is the key  
2 word, legal duty to pay for the settlement. Therefore, I think  
3 what you should do is not pay for it. And if Senator Schmitz  
4 chooses to sue you, let a judge decide whether you have a duty to  
5 pay.

6 I don't think you have such a duty. I don't think any  
7 judge is going to find that you have such a duty.

8 Let it be litigated. Don't just sort of open it up,  
9 open up the taxpayers' purse and throw the money at people. I  
10 mean, let the judge decide that you have to pay.

11 SENATOR MELLO: So that would be litigated.

12 I've been in business all my life, and I try to stay out  
13 of court because the costs of going to court are tremendous and  
14 awesome.

15 I think what we're looking at today is what is our least  
16 cost alternative to try to bail out of this situation and protect  
17 the taxpayers' exposure, rather than get into an arena in court  
18 and have this thing go on and on and on, and end up costing a ton  
19 of money.

20 MS. ALLRED: I think, sir, if you had an action for  
21 declaratory relief, it would not be that expensive. It would not  
22 be that expensive, but there are more things at issue here than  
23 money.

24 I know that you, sir, are very much aware of that, and I  
25 know that Senator Petris has pointed that out.

26 That's the way I think it should go. I mean, Senator  
27 Schmitz and his aide have caused this problem to be before you  
28





1 and take your valuable time. It's of concern to all the people  
2 of the State and the entire Senate.

3 Let him have to go to court, and let a judge decide this  
4 matter.

5 SENATOR MELLO: Thank you.

6 MS. ALLRED: I just wanted to say, Senator Petris, while  
7 you were out for a moment, that in response to your point that  
8 the Appellate Court somehow supports the Committee on this, I  
9 believe the issue before the Appellate Court was not the  
10 settlement, because no settlement had been reached at that time.  
11 It was the defense.

12 Really what I'm here today to talk about is the  
13 settlement, not the defense.

14 SENATOR PETRIS: I agree. I thought I was referring to  
15 the tendering the defense not the settlement itself.

16 The way I view it on the cost thing, I looked at this  
17 amount as part of the cost of being in it inasmuch as it's below  
18 what the probable cost would be if we had stayed in it and  
19 insisted on trial, or if you had insisted on going to trial; if  
20 there weren't a settlement.

21 MS. ALLRED: As to the precedent point that you made and  
22 that Senator Roberti made, I know that every Senator is concerned  
23 about: Well, what if I get sued? Will I get my defense paid  
24 for? Will I get my settlement paid for?

25 And I'm sure that if I were a Senator, that I would be  
26 asking a question as a point of information. I would like to  
27 know the answer.  
28



1 I of course would also be at the same time aware of my  
2 bias in making an impartial decision were I even to raise such a  
3 question, because I'd be thinking of my own personal interests  
4 rather than the interests of the State of California.

5 However, I don't really think it creates a precedent  
6 wherein you could not get a defense paid for in the future for  
7 many, in fact most cases, or perhaps even a settlement.

8 And it is because it's very important to distinguish  
9 this case, this case is very, very distinguishable because this  
10 is a plain political attack, as Brad Evans says in his  
11 deposition. This is not about an ordinary case, a car accident,  
12 or even, sir, as you pointed out, Senator Petris, a vote on a gun  
13 control bill. This is not about a vote, something that happened  
14 in the course of a legislative proceeding.

15 This is about something that didn't even happen at a  
16 hearing. A press release was issued about a week later. And  
17 then he stood, you know, behind it.

18 SENATOR PETRIS: What was the time span there? I  
19 thought it came out a lot closer to the hearing than that.

20 MS. ALLRED: I know I have the date here on the release.

21 SENATOR PETRIS: I thought it was pretty closely  
22 connected to the hearing in terms of emotional reaction to your  
23 stealing his thunder on the press thing.

24 MS. ALLRED: I of course, by the way, don't admit that I  
25 stole anybody's thunder.

26 MR. RUSTON: The hearing in Los Angeles, December 16.  
27  
28



1 MS. ALLRED: December 22nd is the date on the press  
2 release, so that's about a week. I don't know how long the heat  
3 of passion lasts.

4 SENATOR PETRIS: Yes, it depends --

5 MS. ALLRED: I won't ask anyone here to testify as to  
6 passion.

7 SENATOR PETRIS: -- on the individual.

8 MS. ALLRED: In any event, it was enough time that  
9 passed that it was not still the hearing.

10 So, I think that that is certainly distinguishable.

11 And as to Senator Roberti's libel case, I'm certainly  
12 not familiar with the facts of that, but I think that even if  
13 there were a libel case brought against the Senate or brought  
14 before this particular Senator Rules Committee, that the Senate  
15 Rules Committee could do what it can do now; that is, look into  
16 the facts before it decides whether to pay the defense. And if  
17 it does not believe there was malice on the part of the Senator,  
18 as I'm sure that there was not on the part of Senator Roberti in  
19 the action which he stated, then of course his defense would be  
20 paid for.

21 But if there were malice, knowledge that it was false,  
22 or reckless disregard that it was false, then the Senate wouldn't  
23 pay for the defense or the settlement. And in this case, I  
24 believe that I have shown beyond a reasonable doubt, and I  
25 certainly don't have to adhere to that standards, but I have it,  
26 that there was malice.

27  
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1           So, you could find yourself within the exception here  
2 and not create any precedent to stop anyone from getting a  
3 rightful defense in the future or, perhaps, even the payment of a  
4 settlement.

5           This case is distinguishable. You've never in the  
6 history of the Senate of California ever had a Senate Resolution  
7 deploring and disassociating from a press release by a Senator.

8           Okay, I know we want to wind up.

9           One other thing is, Brad Evans was not represented. Very  
10 interesting to me. He was an employee of the Senate. And yet no  
11 one's talking about paying -- I know that he wasn't asked --

12          SENATOR PETRIS: He didn't ask.

13          MS. ALLRED: He didn't ask, but that creates a concern  
14 in some people's minds, that the Senator was represented and Brad  
15 Evans was not.

16          Finally, I will say that there are certainly those three  
17 exceptions I pointed out. I think he falls within every one of  
18 those three exceptions to 995. And you do not have to pay the  
19 settlement.

20          Let Schmitz establish what the Legislative Counsel said  
21 four years has to be established for him to get the payment; that  
22 is, until it's established that the injury arose out of an act  
23 occurring within the scope of Senator Schmitz's employment. This  
24 wasn't within the scope of his employment, to libel Jewish women  
25 by talking about a sea of hard, Jewish and arguably female faces;  
26 to call lesbians and gay persons queers and bulldykes; to talk  
27 about those who believe in the right to choose abortion as  
28



1 murderous marauders; to call me a slick butch lawyeress. Not  
2 within the scope.

3 Thank you.

4 CHAIRMAN ROBERTI: Thank you.

5 Mr. Tabash.

6 MR. TABASH: Edward Tabash, T-a-b-a-s-h, from the Los  
7 Angeles area, representing the California Abortion Rights Action  
8 League and myself.

9 Senators, I think that the issue is really a very narrow  
10 one. That is, does this Committee have a legal duty to provide  
11 indemnification for the settlement, which is really the same for  
12 practical purposes as a judgement that was reached in this case.  
13 And I think not.

14 First of all, the duty to defend does not of itself in  
15 this kind of context carry a duty to indemnify. I think that all  
16 the court cases and the litigation that has happened thus far  
17 spoke to the provision of a defense, but not to the provision of  
18 actual money to pay the settlement or judgement.

19 It's just as if an attorney who has malpractice  
20 insurance gets sued for intentional tort, like malicious  
21 prosecution or abuse of process, that the insurer will pay for  
22 the defense, but if upon a finding for Plaintiff, will not pay an  
23 amount incurred for an intentional tort.

24 Now usually that's admittedly done by a reservation of  
25 rights on the part of the insurer. And I don't think, though,  
26 that in this context that the State Senate has to specifically  
27 reserve rights in order to be able to now legally avoid paying  
28 the settlement amount for Senator Schmitz.



1 First of all, if we look to the Code provisions, 995,  
2 and the exceptions, and we focus in on the question of malice,  
3 much as has already been very ably discussed by Ms. Allred, I  
4 think that the nature of the statement and Senator Schmitz's  
5 ratification of this so vigorously in standing behind it lays to  
6 rest the question of malice. Certainly that kind of statement  
7 contemplates what was meant in the composition of that statute  
8 for the type of malicious act which would excuse the State of  
9 California from indemnifying someone.

10 But I think even more telling is the other way out, if  
11 you will, and that is the question of within the scope of  
12 employment. When Senator Petris was sued, he was sued on an  
13 obviously bogus premise, because it was within the scope of his  
14 duties as a State Senator to vote for legislation.

15 I submit, as an abortion rights activist, if Senator  
16 Schmitz had submitted a piece of legislation with the intent of  
17 outlawing abortion, that for that legislative act, regardless of  
18 my passion on the other side of him, I would have had no legal  
19 cause of action because he had a right to do what he was doing in  
20 the context of his attempts to outlaw abortion.

21 And I would say to Senator Roberti, whom I've opposed on  
22 this issue, anything that you have done on this issue, though I  
23 may not like it, has given me no legal cause of action against  
24 you and I don't think ever will.

25 CHAIRMAN ROBERTI: I hope not. One million dollar suit  
26 is enough in a lifetime.  
27  
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1 MR. TABASH: But moving outside of the appropriate  
2 boundary of legislative conduct -- see, for a Senator to vote for  
3 or against a measure or a resolution is obviously within the  
4 proper scope of that conduct. And the fact that one may dislike  
5 the specific result doesn't give a citizen the cause of action.  
6 Just as if someone doesn't like the result of a legal case, one  
7 does not, I believe, have a right to sue the judge for calling a  
8 motion one way or another.

9 However, for a Member of the Legislature to engage in  
10 defamatory conduct which causes great damage which is totally  
11 unnecessary and exceeding the bounds of proper legislative  
12 conduct, I don't think that the Senate has to fear that the  
13 failure to indemnify former-Senator Schmitz for this conduct  
14 would open the door for State Legislators being exposed at  
15 personal risk if they are sued for things they do in the  
16 legitimate course of their legislative conduct. I think that's a  
17 very, very important distinction which we don't need to lose  
18 sight of.

19 The opposite would be happening in that if this  
20 Committee votes to indemnify Senator Schmitz, a signal is being  
21 sent to all Legislators that regardless of how beyond the context  
22 of appropriate legislative conduct a Member of this Legislature  
23 engages in, that they will be able to do so with immunity. And I  
24 think that is the flip side, if you will, of the problem that  
25 Senator Petris raised.

26 So I would urge that this Committee not indemnify the  
27 settlement.  
28



1 CHAIRMAN ROBERTI: Senator Petris.

2 SENATOR PETRIS: I said at the outset that this analogy  
3 wasn't a perfect one between my case and that. But there are a  
4 lot of people out there who honestly believe that I was violating  
5 the Constitution of this country and of the State by doing what I  
6 did. They don't care whether it's the scope of duty. They don't  
7 know what that means.

8 And they felt it was a waste of taxpayers' money, an  
9 abuse, in using taxpayers' money to pay for my defense in some  
10 illegal, unconstitutional acts, as they saw them.

11 Do you see what I mean? It's a matter of scope, I  
12 suppose.

13 And again, that doesn't near to comparing it with this.  
14 But I suppose I was trying to show how my outlook on this might  
15 have been colored by my own experience at one stage of the game  
16 many, many years ago.

17 MR. TABASH: But yet, Senator, if you had stepped off  
18 the platform of a legislative hearing and decked somebody, or  
19 issued a statement from your office with this kind of --

20 SENATOR PETRIS: Yes, I recognize that difference.

21 MR. TABASH: So the question of scope, though, is one of  
22 degree.

23 Luckily for the position of those of us supporting Ms.  
24 Allred, the conduct of which we are complaining on the part of  
25 Senator Schmitz is so far beyond the other types of things for  
26 which Legislators have been indemnified in the past that there is  
27 no analogy. We don't even have to worry about how wide or narrow  
28 the scope is.



1 MS. ALLRED: While I'm passing the mike over to Mr.  
2 Coleman, it would seem to me that there might be at least an  
3 appearance of impropriety, that is at least an appearance of a  
4 conflict on this matter for every Senator here.

5 That's one of the reasons, it's another reason why I  
6 think it would be better if you did not make an allocation, if  
7 all of you abstained from making any allocation, and let the  
8 Court decide. The Court will be impartial about it. Whereas, I  
9 don't see how any one of you could be impartial about it. Or it  
10 may be that you are impartial, I'm not saying you're not, but  
11 there might be an appearance of impropriety, an appearance that  
12 you might not have been impartial because you might be worrying  
13 about a future law suit.

14 I mean, you're human beings. You couldn't help but  
15 perhaps think about the issue, even though you would try to be  
16 fair in a vote.

17 MR. COLEMAN: Mr. Chairperson and Members of the  
18 Committee, my name is Thomas J. Coleman, Jr. I've been a lawyer  
19 in private practice in the states of Louisiana and Texas,  
20 President of the Texas Human Rights Foundation, a gay rights  
21 organization in Texas, and have just come on as Director of Legal  
22 Services at the Los Angeles Gay and Lesbian Community Services  
23 Center.

24 I'm here today to represent the view of myself as well  
25 as those who work at or who are served by the Center, and that  
26 constitute many, many people in Los Angeles.

27  
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1 I'd like to thank you, first of all, for allowing me to  
2 make this statement before the Committee.

3 Six years ago, former-Senator Schmitz issued a press  
4 release which not only made libelous statements about an attorney  
5 who simply exercised her right to express her opinion on  
6 important public issues, but which also deliberately sought to  
7 inflame already existing hatred against certain groups of people  
8 simply because of who they are, including gay men and lesbians in  
9 this State.

10 When the State Senate in 1982 acted to deplore the  
11 statement issued by Senator Schmitz, and I had an opportunity to  
12 read this transcript on my way up here today, Members of this  
13 body stated repeatedly that there was no question as to the  
14 bigotry of the Senator's statement, nor of the clearly apparent  
15 ill will that motivated that statement.

16 But now, when it comes to actually compensation Ms.  
17 Allred for the wholly unjustified insults she suffered as well as  
18 the expression of hatred inflicted upon gay men and lesbians and  
19 other groups by former-Senator Schmitz, because of the action  
20 taken by the Rules Committee, Senator Schmitz need not suffer any  
21 direct financial liability whatsoever.

22 I, along with other taxpaying gay men and lesbians whom  
23 I have consulted on this matter -- and I apologize to the  
24 Committee for not being able to speak with very many people, but  
25 the notice was somewhat short today -- would like to express our  
26 extreme displeasure towards this course of events.

27  
28



1           No legal, moral, or public policy purpose is served by  
2 providing what is, in effect, a financial subsidy to statements  
3 that all responsible people agree are truly reprehensible.

4           And in my experience as an attorney in Louisiana, I must  
5 reflect to the Committee that I've been in the position of  
6 defending public officials who had been sued. Most of the law  
7 suits, of course, were clearly frivolous. So I do understand the  
8 concern of the Members of the Committee that these sorts of suits  
9 are taken.

10           But the decisions ultimately are made by the courts as  
11 to what kind of conduct is proper, what kind of conduct is  
12 subject to protection, and what is not subject to protection.  
13 And again, this sometimes can be an expensive process, but I  
14 think it's much more in the province of the courts to ultimately  
15 decide this question rather than parties who may have some sort  
16 of very understandable self-interest.

17           In any case, we do express our concern, but we'd like to  
18 thank the Committee for allowing a public airing of this issue  
19 and would hope that the Rules Committee would be persuaded to  
20 change its mind on this important matter.

21           Thank you very much.

22           CHAIRMAN ROBERTI: Thank you, Mr. Coleman.

23           You may conclude, Ms. Allred, and then we will have Mr.  
24 Gregory and Mr. Ruston make any comments in rebuttal for a few  
25 moments.

26           Why don't we have a break, then we'll let Ms. Allred  
27 conclude, then Mr. Gregory and Mr. Ruston, and then we will  
28 entertain a motion.



1 We'll break for five minutes.

2 (Thereupon a brief recess was taken.)

3 CHAIRMAN ROBERTI: Ms. Allred, you may conclude.

4 MS. ALLRED: I just want to say that a vote "yes" on  
5 payment of Senator Schmitz's settlement, I think, would cause  
6 this to be yet another day that will live in infamy. It must not  
7 be done. It cannot be done.

8 It will be interpreted, as well it should, as a slap in  
9 the face to Jewish people, to homosexuals, those who believe in  
10 the right to choose abortion, and Protestants, who I believe were  
11 also maligned in the press release when he said that the hearings  
12 were held in Calexico which is Catholic, and therefore somewhat  
13 civilized territory, as though Protestant territory is not  
14 civilized.

15 I hope that the Senators here will stand up for what is  
16 right and just, and not just stand up for what might happen to  
17 them in a law suit in the future. Political pragmatism has no  
18 place here. Covering one's own derriere has no place here.

19 I know that the Senators were elected by the people in  
20 their constituencies and in this districts because they had faith  
21 that they would act in the public interest.

22 There is only one way to vote on this: It's "no" or  
23 abstention.

24 Thank you.

25 CHAIRMAN ROBERTI: Mr. Gregory and Mr. Ruston.

26 MR. RUSTON: Senator Roberti, I would like to put a  
27 couple of things into perspective in this particular matter, and  
28





1 particularly, Senator Petris, in view of some of the things that  
2 have been said here about indemnity.

3 First, the only party to this law suit is the Plaintiff,  
4 Gloria Allred. The statement about a slap in the face to other  
5 people has nothing to do with this law suit because it's not even  
6 and should not be admissible at the time of trial as to anyone  
7 else because the only person claiming to be defamed is Gloria  
8 Allred.

9 If she accuses you of having the appearance of a  
10 conflict when in testifying as her own self in her own case, it's  
11 obvious.

12 Secondly, this case is a case that would not have been  
13 settled, and mind you it is not a judgement; it is a settlement.  
14 And as a part of the settlement made in good faith, the Apology  
15 was issued and is not an admission. It is something that came  
16 about as a compromise in accordance with the public policy of the  
17 State of California to encourage settlements and terminate  
18 litigation, though this hasn't been terminated because it's  
19 prolonged even by this hearing.

20 Additionally, I would like this group to know that as of  
21 June 30, 1986, in a letter that I sent to Ms. Allred's attorney,  
22 Charles O'Reilly, I mentioned to him, among other things, the  
23 following: I indicated that I'd had a discussion with Ms.  
24 Allred, that he had had to go off, and I'd also talked to a Mr.  
25 Vogel in his office. And I stated in that letter to him as  
26 follows, quote:



1 "In those discussions as I mentioned  
2 to you, the Senate indicated they would  
3 be willing to consider an offer to pay  
4 some money in order not to have to pay  
5 the costs of defending this case. Ad-  
6 ditionally Senator Schmitz has indicated  
7 that he would issue an apology publicly  
8 to the papers stating in essence as  
9 follows ..."

10 And then in essence what was there, and I won't repeat it.

11 In a letter of the same date to Mr. Bion Gregory with  
12 regard to this particular matter, I informed him, and I'm  
13 referring to my letter, that at that time Ms. Allred asked if  
14 Senator Schmitz would pay any money, and I told her no, the money  
15 would be coming, if there was any money, from the State Senate.

16 Additionally, at the time that I was authorized by  
17 Senator Schmitz to enter into this settlement agreement and to  
18 issue the Apology, it was on condition that the authority that  
19 had been granted to me, as I understood it, from the Senate of  
20 the State of California, that they would pay \$20,000 in  
21 settlement of this, which was acceptable. It was entered into  
22 and agreed.

23 Consequently, the statement that Ms. Allred and the  
24 other two gentlemen are attempting to use now as, quote,  
25 "statements of fact" that change and should alter it were not  
26 present at the time the agreement was made in good faith to  
27 terminate the litigation and to reduce the costs to the taxpayers  
28



1 of the State of California. And it's being continued now by  
2 statements that it should now be litigated despite the fact that  
3 there was a negotiated settlement, the terms of which have not  
4 been denied here by these people.

5 It was full well-known exactly where I was getting my  
6 authority because it was revealed. Ms. Allred knew that I had my  
7 authority from this group.

8 CHAIRMAN ROBERTI: Mr. Gregory.

9 MR. GREGORY: I have no other comments, Mr. Chairman.

10 CHAIRMAN ROBERTI: Do I hear a motion?

11 SENATOR DOOLITTLE: I move to approve the settlement.

12 CHAIRMAN ROBERTI: Any discussion on the motion?

13 Hearing none, the Secretary will call the roll.

14 SECRETARY WEBB: Senator Doolittle.

15 SENATOR DOOLITTLE: Aye.

16 SECRETARY WEBB: Senator Mello. Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: No.

20 SECRETARY WEBB: Senator Roberti.

21 CHAIRMAN ROBERTI: Senator Roberti abstains.

22 Is there a motion for a call?

23 SENATOR PETRIS: So move.

24 CHAIRMAN ROBERTI: Senator Petris moves that a call be  
25 placed.

26 SENATOR PETRIS: For a short time.  
27  
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1 CHAIRMAN ROBERTI: Will the Sergeant find out if Senator  
2 Mello plans to return.

3 I don't know if Senator Mello is abstaining or if he  
4 wants to abstain or not.

5 A motion is always in order to lift the call.

6 Senator Mello, the motion on the matter of the  
7 settlement is on call. The vote stands right now as two votes in  
8 favor of the settlement, one vote opposed, and one abstention.

9 That would therefore indicate that your vote is critical  
10 on the matter.

11 SENATOR MELLO: Good timing to go to the Men's Room.

12 CHAIRMAN ROBERTI: Is there a motion to lift the call?

13 SENATOR CRAVEN: Lift the call.

14 CHAIRMAN ROBERTI: Senator Craven moves the call be  
15 lifted.

16 Secretary will call the roll.

17 SECRETARY WEBB: Senator Mello.

18 SENATOR MELLO: No.

19 CHAIRMAN ROBERTI: The vote is two "yes", two "no", one  
20 abstention. The motion for the settlement fails.

21 Further proceedings under the Committee, there are none.  
22 Senator Mello moves that we stand adjourned.

23 Without objection, such will be the order.

24 (Thereupon this hearing before the  
25 Senate Rules Committee was adjourned  
26 at approximately 4:35 P.M.)

--oo0oo--

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CERTIFICATE OF SHORTHAND REPORTER

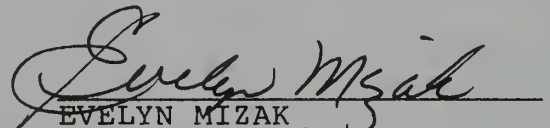
I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

12<sup>th</sup> day of January, 1987.

  
EVELYN MIZAK  
Shorthand Reporter















